IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10493 of 2024

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Animesh Kumar S/o Sri Bharat Bhushan Kumar resident of -H 01, Near Futani Chowk, Officers Colony Mirchaibari, Katihar, Katihar, Bihar, 854105.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Additional Secretary, General Administration Department, Government of Bihar, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Santosh Kumar, Sr. Advocate Mr. Sourav Suman, Advocate Ms. Pragati Patra, Advocate Mr. Sushant Srivastava, Advocate Mr. Aalekh Anand, Advocate
For the State	:	Mr. P.K. Verma, A.A.G.-3 Dr. Mankeshwar Tiwari, A.C. to AAG-3 Mr. Suman Kumar Jha, A.C. to AAG-3 Mr. Raghwendra Kumar, S.C.-22 Mr. Ravi Ranjan, A.C. to S.C.-22
For the Union of India	:	Mr. Amish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 15-05-2026

The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India assailing the disciplinary proceeding initiated against the present petitioner, primarily on the allegation of amassing disproportionate assets, beyond the known sources of his income among other allegations, and the consequent punishment of censure and withholding of three increments with cumulative effect, imposed to him.

2. In this backdrop, the petitioner has invoked the writ jurisdiction of this Court by way of this petition, *inter alia,* praying for the following reliefs -:

"a. To issue appropriate writ(s) / order(s) / direction(s) in the nature of Certiorari quashing and setting aside the order dated 24.11.2023 passed vide letter no.21626 (as contained in Annexure P/110 whereby, punishment of censure (2016-17) and withholding of three increments with cumulative effect has been imposed on the petitioner and further the review (sic) order passed vide letter no. 4120 dated 07.03.2024 rejecting the Review Application filed by the petitioner without application of mind in a mechanical manner. (Annexure-P/14).

b. To issue appropriate writ(s) / order(s) / direction(s) in the nature of Certiorari setting aside the entire departmental proceeding initiated vide Memo No. 8063 dated 04.08.2021 (Annexure-P/7) against the petitioner as the same is perverse.

c. For quashing the enquiry report of Joint Commissioner, Departmental Enquiry, Patna, dated 20.04.2023.

d. To issue appropriate writ(s) / order(s) / direction(s) in the nature of mandamus directing the Respondent Authorities to pay all consequential benefits to the petitioner including arrears of salary after taking into consideration all the promotions, increments and pay revisions as applicable to the petitioner along with *interest thereupon.*

e. To pass such order(s) direction(s) for which petitioner is entitled in the facts and circumstance of the instant case."

3. By way of an Interlocutory Application being ***I.A. No. 01 of 2025***, in light of the subsequent acquittal of the petitioner, by the learned Special Judge, Vigilance, Patna, in Special Vigilance Case No. 45 of 2016 *vide* his judgment dated 12.06.2025, and also in light of the judgment of the Hon'ble Supreme Court in ***Maharana Pratap Singh v. State of Bihar,*** reported as ***2025 SCC OnLine SC 890***, the petitioner has further prayed that the impugned order of punishment be declared *non est* in law and that he be granted the benefit of General Administration Department Notification No.19300 dated 13.10.2023 read with Notification No.636 dated 10.01.2024 with retrospective effect, on parity with officers placed below him in the Bihar Administrative Service Cadre Civil List, 2024.

4. The brief factual matrix relevant for the present purpose is that the petitioner, Animesh Kumar, is a member of the Bihar Administrative Service, having joined service on 08.01.1996 as Deputy Collector. From the year 2014 to 2016, the petitioner was posted as District Transport Officer, Kaimur (Bhabhua). It is the case of the petitioner, that before the subject disciplinary proceedings regarding the disproportionate assets, another disciplinary proceeding was initiated on the allegation of recovery of unaccounted excess amount of money from a check-post while he was posted as District Transport Officer, Kaimur (Bhabua).

5. On 16.03.2016, the Vigilance Investigation Bureau, Patna, conducted simultaneous raids/searches at three places, namely the residence of the petitioner, his office at Bhabhua, and the Karmanasha Check Post at Kaimur. In the aforesaid search/raid, at the Karmanasha Check Post, a cash amount of approximately Rs. 60,80,450/- was recovered, out of which an amount approximately about Rs.5,28,000/- was treated by the Vigilance authorities as unaccounted excess.

6. On the basis of the said recovery of unaccounted money on 16.03.2016, at the Karmanasha Check Post, Vigilance P.S. Case No. 41 of 2016 dated 08.04.2016 was registered under Sections 420, 409, 467, 468, 471 read with Section 120-B of the Indian Penal Code and Sections 13(2), 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, against eight persons, including the petitioner.

7. In relation to the said Karmanasha matter, the petitioner had earlier approached this Court in ***Civil Writ***

Jurisdiction Case No. 19952 of 2016, titled as ***'Animesh Kumar vs State of Bihar & Ors,'*** *inter alia* praying for audit of the books of account of the Transport Department at Bhabhua/Karmanasha Check Post. A Co-ordinate Bench of this Court *vide* order dated 07.09.2017 had directed the Transport Department to examine the prayer of the petitioner for audit and to conduct such audit as per requirement.

8. Parallel to the criminal case arising out of Vigilance P.S. Case No. 41 of 2016, a departmental proceeding bearing No.03 of 2018 was also conducted against the petitioner by the General Administration Department on the basis of Resolution/Memo No. 16692, dated 29.12.2017, in relation to the Karmanasha check-post recovery of unaccounted cash. Subsequently, the Commissioner, Departmental Enquiry, General Administration Department *vide* his order dated 25.05.2018 had recorded his findings in the aforesaid departmental proceeding and according to the petitioner he was exonerated thereunder.

9. It is the case of the petitioner, that following the Karmanasha check-post raid/search, the Vigilance Investigation Bureau initiated an enquiry into the assets of the petitioner and *vide* letter No. 5105 dated 17.08.2016, the petitioner was called upon to submit details of his assets and properties in prescribed Formats I to VI, however, the petitioner requested the Vigilance Bureau for extension of time to collate and then submit the documents pertaining to more than twenty years of his service.

10. On 23.08.2016, the petitioner is stated to have lodged a written complaint before the Bihar Human Rights Commission, Patna, against the Vigilance Department and the Transport Department, complaining, *inter alia*, of his alleged illegal detention and harassment at the Bureau headquarters for over sixty-four hours.

11. It is the case of the petitioner, that the aforesaid complaint preferred by the petitioner had infuriated the Vigilance Officials and in retaliation thereof, on 26.08.2016, the Vigilance Investigation Bureau registered Vigilance P.S. Case No.82 of 2016 against the petitioner and his wife, under Sections 109 and 120(B) of the Indian Penal Code read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The First Information Report alleged that during the check period from 08.01.1996 to June 2016, the petitioner had acquired assets disproportionate to his known sources of income to the tune of Rs. 82,84,001/-.

12. By letter No. 6450, dated 28.10.2016, the Transport Department forwarded the details of the Vigilance case i.e. Vigilance P.S. Case No.82 of 2016 to the General Administration Department, which is the parent cadre-controlling department of the petitioner, however, the Vigilance Investigation Bureau had already forwarded a copy of the First Information Report to the said Department vide its dated 05.09.2016. Thereafter, the General Administration Department, *vide* its letter No. 14296 dated 18.10.2019, sought the explanation of the petitioner on the allegations of amassing disproportionate assets among other allegations. The petitioner submitted his explanation to the aforesaid show cause dated 18.10.2019, by his letter dated 04.11.2019. Thereafter, pertinently, after lapse of almost five years, the General Administration Department, upon finding the explanation submitted by the petitioner to be unsatisfactory, initiated a departmental proceeding against him *vide* its impugned resolution no.8063 dated 04.08.2021, whereby the Commissioner, Patna Division, Patna, was appointed as the conducting/enquiry officer, and the Vigilance Investigation Bureau was to nominate a senior officer as the Presenting Officer.

13. The said resolution dated 04.08.2021 framed five charges against the petitioner in *Prapatra-Ka*, which were broadly as under:-

(i) Charge No.1-the registration of F.I.R being Vigilance P.S. Case No. 82 of 2016 against the petitioner on the allegation of possession of disproportionate assets;

(ii) Charge No.2-alleged non-disclosure and suppression of details about Allahabad Bank account at Patna and ICICI Bank account at Dwarka, New Delhi by the petitioner in his annual asset declaration for the year 2015;

(iii) Charge No.3-alleged non-disclosure and suppression of details regarding a fixed deposit of Rs. 3,00,000/-, a DMAT account holding of Rs.1,81,747/-, and the flat at Dwarka, New Delhi by the petitioner in his annual asset declaration for the year 2015;

(iv) Charge No.4-alleged acquisition of assets disproportionate to known sources of income to the tune of Rs.82,84,001/- and

(v) Charge No.5-alleged willful non-disclosure of bank accounts and movable/immovable properties in the annual asset declaration by the petitioner, as an act of concealment.

14. The petitioner submitted his reply to the memo of charge by letter dated 22.10.2021, accompanied by relevant supporting documents. Parallelly, on 10.08.2022, during the pendency of the subject departmental proceeding, the Investigating Officer of Vigilance P.S. Case No.82 of 2016 submitted Charge-Sheet No.41 of 2022 against the petitioner and his wife in the Court of the learned Special Judge, Vigilance, Patna in connection with Special Vigilance Case No.45 of 2016. In the said charge-sheet, the alleged disproportionate-assets figure was stated to have been recomputed at Rs.1,20,03,056/-. Thereafter cognizance of the offences was taken by the learned Special Judge on 03.11.2022.

15. It is the case of the petitioner that in the subject departmental proceedings, the Presenting Officer had placed on record the aforesaid charge-sheet being charge-sheet No. 41 of 2022 and thereafter, the conducting officer proceeded to enquire into the matter on the basis of the revised figure of Rs. 1,20,03,056/-, as mentioned in the charge-sheet, without a fresh sanction by the disciplinary authority and without formal amendment/modification of the *Prapatra-Ka*.

16. Upon completion of the enquiry, the report was submitted by the Joint Commissioner, Departmental Enquiry, Patna Division, Patna, by his letter dated 20.04.2023. In the said report, the enquiry officer has found that :-

(i) Charge No.1 does not constitute a substantive charge as it merely recited the registration of the FIR;

(ii) Charges No. 2 and 3 not proved;

(iii) Charge No. 4 proved only to the extent of Rs. 19,21,992/- and

(iv) Charge No. 5 partly proved.

17. By letter dated 02.05.2023 and thereafter by letter dated 29.05.2023, the General Administration Department issued the second show-cause notice to the petitioner, calling upon him to submit his representation on the enquiry report and responding thereto, the petitioner by his written submission dated 15.06.2023, has raised, inter alia, the following objections:-

(i) Entrustment and further delegation of the enquiry to the Joint Commissioner without statutory authority;

(ii) Enlargement of the charge from Rs. 82,84,001/- to Rs.1,20,03,056/- without sanction;

(iii) Calculation errors in respect of the DDA Flat at Dwarka;

(iv) Double-counting in respect of the Tata Indigo car;

(v) Inclusion of jewellery as expenditure;

(vi) Non-consideration of the Circle Officer, *Harsidhi's* report dated 17.02.2022 (Letter No. 198) regarding the agricultural income of the petitioner; and

(vii) Denial of opportunity to cross-examine the listed oral witnesses.

18. Thereafter, the General Administration Department consulted the Bihar Public Service Commission through letter No.14574 dated 31.07.2023 on the proposed punishment, to which the Bihar Public Service Commission, *vide* its letter dated 03.11.2023, agreed with the proposed punishment and finally, *vide* impugned resolution dated 24.11.2023, the General Administration Department, Government of Bihar, imposed upon the petitioner the major penalty of (i) censure for the charge year 2016-17; and (ii) withholding of three increments with cumulative effect.

19. Prior to the issuance of the aforementioned punishment order, the petitioner had filed ***Civil Writ Jurisdiction Case No. 14365 of 2023***, titled as ***'Animesh Kumar vs. The State of Bihar & Ors.'*** before this Court, challenging the enquiry report dated 18.04.2023 and praying for stay of further proceedings. However, *vide* order dated 19.03.2024, a Co-ordinate Bench of this Court had recorded that during the pendency of the said writ petition, the order of punishment had been passed, and accordingly had disposed of the writ petition with liberty to the petitioner to file a fresh writ petition challenging the punishment order.

20. Aggrieved by the aforesaid impugned Resolution no. 21626 dated 24.11.2023, the petitioner preferred a review application dated 23.01.2024 before the General Administration Department, which came to be rejected by the impugned Resolution no. 4120 dated 07.03.2024, recording that the petitioner ought to have raised the issue of witness examination/cross-examination before the conducting officer and the penalty imposed by the impugned Resolution no. 21626 dated 24.11.2023 was thereby kept intact.

21. Mr. Santosh Kumar, learned Senior Counsel appearing on behalf of the petitioner, has, at the outset, submitted that the enquiry report dated 18.04.2023, the impugned order of punishment dated 24.11.2023 and the rejection of the review application dated 07.03.2024 are wholly unsustainable in law, in facts and in procedure.

22. The learned Senior Counsel, has submitted that the first and most fundamental illegality vitiating the departmental proceeding lies in its very constitution. By the Resolution no. 8063 dated 04.08.2021, the disciplinary authority appointed the Commissioner, Patna Division, Patna, as the conducting officer, however, subsequently, by office dated 01.09.2021, the Commissioner, on his own motion, transferred the enquriy to be conducted by the Joint Commissioner, Departmental Enquiry, Patna Division, who thereafter conducted and concluded the entire enquiry.

23. Learned Senior Counsel has submitted that Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, being statutory rules framed under the *proviso* to Article 309 of the Constitution of India, vests in the disciplinary authority the power to appoint the enquiry authority. The enquiry authority so appointed is a statutory functionary entrusted with a quasi-judicial responsibility. It is settled law that a statutory functionary, in the absence of an express enabling provision, cannot further sub-delegate or substitute his statutory function to another officer.

24. Learned Senior Counsel has invited the attention of this Court to the *proviso* to Rule 17(2) of the Bihar CCA Rules, 2005, inserted in the year 2008, which permits a limited and specified power of transfer only by the Departmental Enquiry Commissioner to the Additional Departmental Enquiry Commissioner. Applying the maxim '*expressio unius est exclusio alterius*', the rule-making authority must be presumed to have contemplated this single channel of transfer alone. No corresponding statutory provision exists to enable a Divisional Commissioner to transfer an enquiry entrusted to him, to a Joint Commissioner. In support of his submission, Mr. Santosh Kumar, learned Senior Counsel, has placed reliance on the well-settled principle of '<u>*delegatus non potest delegare*</u>'.

25. It is submitted that the defect is not a mere procedural irregularity. A major-penalty enquiry under the Bihar CCA Rules is *quasi-judicial* in nature. The enquiry officer receives evidence, appreciates documents, evaluates the defence, and submits findings on charges carrying serious civil consequences. The appointment of a legally competent enquiry authority is not an empty formality. If the officer who conducted the enquiry was not appointed by the disciplinary authority and had no statutory authority to conduct it, the enquiry report dated 18.04.2023 is a nullity, and the punishment order dated 24.11.2023 and the review rejection dated 07.03.2024, both founded upon the said enquiry report, are unsustainable and liable to be quashed.

26. *Secondly*, Mr. Santosh Kumar, learned Senior Counsel, has submitted that the enquiry is independently vitiated because the conducting officer departed from the charge sanctioned by the disciplinary authority and enquired into a new and enlarged figure of Rs.1,20,03,056/-. The *Prapatra-Ka*, sanctioned by the disciplinary authority, alleged disproportionate assets to the tune of Rs. 82,84,001/-, to which the petitioner submitted his explanation, specifically on that figure, and the disciplinary authority initiated the departmental proceeding on that figure. The conducting officer, however, on the basis of the Vigilance charge-sheet dated 10.08.2022, proceeded to enquire into a fresh and enlarged figure of Rs.1,20,03,056/-, without any sanction of the disciplinary authority and without any amendment to *Prapatra-Ka*.

27. The learned Senior Counsel has emphasized that when an enquiry is not confined to the charge framed, then such an enquiry is fatally vitiated since the charges in the disciplinary proceeding must be definite, clear and specific so as to enable the delinquent to properly meet them in his defence. It is also settled that an enquiry officer cannot travel beyond the charges framed in the departmental proceeding.

28. It is categorically argued by the learned Senior Counsel that the petitioner suffered specific and identifiable prejudice from the said enlargement since he was never put on notice on the enlarged amount of Rs.1,20,03,056/- i.e. an additional amount of Rs.37,19,055/- and no fresh statement of imputations or list of documents were supplied to him, moreover, no fresh opportunity to explain the additional figure was afforded.

29. *Thirdly*, Mr. Santosh Kumar, learned Senior Counsel, has submitted that the enquiry is also vitiated for violation of Rule 17(14) of the Bihar CCA Rules, 2005 on account of non-examination of witnesses. It is submitted that the memo of charge listed Sri Shiv Kumar Jha, Superintendent of Police, Vigilance, and Sri Akhilendra Kumar Singh, Inspector, Vigilance, as oral witnesses but, they were not examined as a witnesses during the enquiry in spite of the repeated request of the petitioner. Consequently, the petitioner was denied opportunity to cross-examine the very witnesses on whose statements, calculations and materials, the charge were founded.

30. It is vehemently argued by the learned Senior Counsel for the petitioner that in a major-penalty disciplinary proceeding, the burden of proof lies on the department to prove the charge against the delinquent and not the delinquent officer. It is next argued that examination of witnesses is *sine qua non* even in *ex parte* departmental proceedings where a major penalty is contemplated, failing which the enquiry stands totally vitiated and *non est* in the eyes of law. It is argued that the petitioner had from the very beginning raised the issue of incorrect computation of the alleged amount specifically pointing out towards the double counting. It is argued that mere production of documents is not proof of their contents and that findings recorded on no evidence are perverse and unsustainable. Pertinently, it is highlighted by learned Senior Counsel that the petitioner has consistently disputed the computation of alleged disproportionate assets.

31. Learned Senior Counsel has emphasized that the present case is not one in which the charge rests on undisputed documents. The very foundation of the charge, that is, the Vigilance computation of disproportionate assets, was contested by the petitioner from the first instance. Whether a particular bank entry is income or expenditure, whether a particular asset was counted once or twice, whether a particular item was acquired by purchase or received as gift, whether agricultural income should be measured on the basis of the income tax returns of the petitioner or on the basis of the report of the Circle Officer. It is argued that each of these is a question that could only have been resolved through examination and cross-examination of the witnesses in the enquiry. The Investigating Officer's computation was not a fact; it was an opinion, and an opinion that the petitioner was entitled to test.

32. In support of this submissions, learned counsel for the petitioner has relied upon the following decisions:-

(i) ***State of U.P. & Ors. vs. Saroj Kumar Sinha*** reported as ***(2010) 2 SCC 772;***

(ii) ***Roop Singh Negi v. Punjab National Bank*** reported as ***(2009) 2 SCC 570*** and

(iii ***Kuldeep Singh vs. Commissioner of Police & Ors.*** reported as ***(1999) 2 SCC 10***.

33. *Fourthly*, the learned Senior Counsel, has submitted that the residual finding of disproportionate assets of Rs.19,21,992/- by the conducting officer is patently wrong since the Investigating Officer has himself admitted the omission and in his counter affidavit filed in Cr.W.J.C. No.458 of 2023 titled as '***Animesh Kumar vs. State of Bihar & Ors.***' he had categorically admitted that the amount of Rs.36,00,000/- of sale consideration of the DDA Flat, Dwarka was counted twice, as a consequence, it is argued that the petitioner is left with a surplus legitimate income of Rs. 16,78,008/-.

34. Learned Senior Counsel has further submitted that, even apart from the aforesaid infirmity relating to the DDA flat, there are other infirmities, each supported by the record, such as, the value of the Tata Indigo car has been counted twice, the value of the jewellery of the wife of the petitioner, which is her *stridhan* and has been counted as an expenditure and the agricultural income of the petitioner which was calculated in contravention with the report of the Circle Officer. Therefore, it is the submission of the learned Senior Counsel for the petitioner that the computation of the alleged disproportionate asset is wholly wrong and the residual amount for which the petitioner was found guilty is neither borne out of record nor supported by witnesses.

35. *Fifthly*, it the submission of the learned Senior counsel for the petitioner that Charge No. 5, being the omnibus charge of willful non-disclosure of bank accounts and movable/immovable properties in the annual assets declaration was found by the conducting officer to be only 'partly proved', and was expressly stated to derive from the partial proof of Charge No. 4. It is categorically pointed by the learned Seniro Counsel that Charges No. 2 and 3 which were the specific charges of non-disclosure of bank accounts, DMAT account and the Dwarka flat, were held by the inquiry officer himself to be not proved. It is further submitted that once Charges No. 2 and 3 have failed, and once Charge No. 4 is rendered arithmetically untenable, Charge No. 5 being the derivative and not independent has no factual content of its own and cannot independently sustain the punishment. The disciplinary authority has, in its impugned order, recorded no independent finding identifying what particular asset, account or property remained 'concealed' after the dismissal of Charges No. 2 and 3.

36. *Sixthly*, the learned Senior Counsel for the petitioner has lastly vehemently argued that the acquittal of the petitioner by the learned Special Judge, Vigilance, Patna, in

Special Vigilance Case No. 45 of 2016 by judgment dated 12.06.2025, has rendered the impugned order of punishment as *non est* since the acquittal was rendered on the same charge sheet, the same documentary record, the same witnesses and the very same Vigilance computation that underlies the impugned disciplinary penalty. It is pertinently pointed by the learned Senior Counsel that the learned Special Judge, had even adverted to the calculation error in the disproportionate asset.

37. The learned senior counsel has argued that the acquittal of the petitioner was not on technical grounds but after appreciation of evidence, the prosecution had failed to prove the charges and as such the petitioner was honorably acquitted. Learned senior counsel for the petitioner has drawn strength from the decision of the Hon'ble Supreme Court in the case of ***Maharana Pratap Singh v. State of Bihar,*** reported as ***2025 SCC OnLine SC 890,*** wherein the Hon'ble Supreme Court has held that where the charges, evidence and witnesses in the departmental and criminal proceedings are identical or substantially similar, and the accused is acquitted by the criminal court, it would be unjust and oppressive to sustain disciplinary punishment arising from the same facts. Further reliance has been placed upon the judgment of Hon'ble Supreme

Court in the cases of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 and G.M. Tank v. State of Gujarat, (2006) 5 SCC 446.***

38. Per contra, the learned Additional Advocate General-3, appearing on behalf of the respondent State of Bihar, has submitted that the present writ petition is wholly devoid of merit and is liable to be dismissed. It is submitted that the petitioner, in substance, invites this Court to undertake an appellate re-appreciation of evidence, to re-cast the disproportionate-assets computation, and to substitute its own conclusion for that of the disciplinary authority an exercise which is impermissible in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

39. Learned senior counsel for the State has, at the outset, invited attention to the well-settled position governing the scope of judicial review in disciplinary matters. It is argued that the High Court is not an appellate forum over the findings of the enquiry officer and can only interfere with the findings of the enquiry officer unless the same is found to be perverse. The learned Senior Counsel for the State has submitted that the disciplinary action was initiated on grave allegations of acquisition of assets disproportionate to known sources of income and non-disclosure of bank accounts and properties in the annual asset declartion of the petitioner. It is further submitted that the petitioner, being a senior officer of the Bihar Administrative Service, is duty-bound under Rule 3 of the Bihar Government Servants Conduct Rules, 1976, to maintain an absolute integrity, devotion to duty and complete transparency in his property and financial disclosures.

40. It is submitted that the disciplinary proceeding was not arbitrary or sudden and it was initiated and carried out in strict adherence to the Bihar CCA Rules after affording ample and sufficient opportunity to the petitioner. Further, refuting the contention of the learned Senior Counsel for the petitioner regarding sub-delegation of the enquiry by the Commissioner, Patna Division to the Joint Commissioner, Patna Division, the learned Senior Counsel for the State has submitted that the entrustment of the enquiry to the Joint Commissioner, Departmental Enquiry, Patna Division, was made in lawful exercise of the power conferred under the notification dated 15.12.2011 issued by the General Administration Department vide Letter No. 13655. It is submitted that under the said notification it has been provided that where the Divisional Commissioner has been appointed as enquiry officer, he may transfer the enquiry to the Additional Collector, Departmental Enquiry, who may directly submit the records and report to the disciplinary authority. The Joint Commissioner is a senior administrative officer specifically posted for the conduct of departmental enquiries and he is adequately equipped to discharge the function and further no prejudice has been shown by the petitioner merely because the enquiry was conducted by the Joint Commissioner rather than by the Divisional Commissioner personally.

41. It is next submitted by the learned Senior Counsel that the contention of the petitioner regarding alteration of charge is totally misconceived, since the substance of the charge is acquisition of disproportionate assets and concealment of bank accounts and properties by the petitioner which has remained unchanged.

42. Further, replying to the contention regarding denial of cross-examination, it has been submitted by the learned Senior Counsel for the State that the enquiry was conducted in accordance with law and in accordance with Rule 17(14) of the Bihar CCA Rules, 2005. The case substantially rested upon documentary evidence i.e. bank statements, annual property returns, sale and purchase deeds, income and expenditure records, and the materials collected by the Vigilance Investigation Bureau.

43. It is submitted by learned senior counsel for the State that Charge No. 5 cannot be treated as wholly derivative of Charges No. 2 and 3 and Charge No. 5 was framed in respect of the overall conduct of the petitioner in his annual asset declaration. It is submitted that even if certain limbs of Charges No. 2 and 3 were not proved, the finding of the enquiry officer that the overall asset declaration of the petitioner was deficient and that he had failed to maintain the standard of integrity required by Rule 3 of the Conduct Rules, 1976, is independently sustainable.

44. Further the impugned order of punishment was passed after duly considering the enquiry report and the detailed representation submitted by the petitioner and further after concurrence from the Bihar Public Service Commission. It is the categorical submission for the learned senior counsel for the State that acquittal in the criminal proceeding does not, as a matter of law, automatically invalidate the departmental punishment, the two proceedings operate in different fields and the standard of proof in a criminal trial is proof beyond reasonable doubt whereas in a departmental enquiry the standard is preponderance of probabilities.

45. It is emphasised that the departmental proceeding in the present case culminated in punishment as far back as 24.11.2023 and the review was rejected on 07.03.2024. It is pointed out that the criminal acquittal of the petitioner came much later i.e. on 12.06.2025. It is argued that a subsequent acquittal cannot retrospectively invalidate a duly conducted departmental proceeding. It is lastly submitted that the disciplinary authority after considering the materials on record had adopted a calibrated approach and imposed a reasonable punishment of censure for the charge year as well as withholding three increments with cumulative effect.

46. I have considered the submission of the parties and have perused the materials available on record.

47. The genesis of the present subject disciplinary proceeding lies in the registration of the Vigilance P.S. Case No.82 of 2016 on the allegation of disproportionate assets possessed by the petitioner beyond the known source of his income. Pertinently, the Investigating Officer of the aforesaid Vigilance Case No.82 of 2016 had submitted a charge-sheet which was relied upon by the enquiry officer and the original alleged amount was enhanced to Rs.1,20,03,056/-. The petitioner in his response had *ab intio* taken a categorical objection regarding the computation of the amount and thereafter, also to the amount for which he was finally found guilty i.e. for an amount of Rs.19,21,992/-.

48. From the perusal of the records of the case, the central limb on which the case of the petitioner stands is the computational discrepancies in the calculation of the alleged disproportionate assets of the petitioner. However, from the perusal of the enquiry report, it appears that no cogent material has been placed on record, which had been proved in the enquiry proceeding to arrive at a figure of disproportionate assets against the petitioner. The memo of charge records the list of witnesses, however, none of the witnesses were examined during the course of enquiry. As such, not only the petitioner was deprived of the opportunity to cross-examine the witnesses but also the documents relied in the disciplinary proceeding were never proved by the witnesses. This Court is mindful of the fact that the background of the present case remains the allegation of possession of disproportionate asset by the petitioner and, as such, the arithmetical calculation of the figures and the inferences drawn therefrom assumes greater significance. As such, the present case, cannot be classified as one entirely borne out of admitted documentary evidence, particularly, when the petitioner had disputed and challenged the calculation at every step of the way and particularly, before the enquiry officer.

49. The Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank*** reported as ***(2009) 2 SCC 570*** held as follows:

> "*14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*"

50. Further, a Division Bench of this Court in the case of ***Devendra Prasad vs. State of Bihar (decided on 19.10.2023 in L.P.A. No. 1302 of 2017)***, has held as under:-

> "*7. As has been held in* Roop Singh Negi *v.* Punjab National Bank, (2009) 2 SCC 570, *the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon'ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the inquiry officer functions in the status of a quasi-judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No inquiry report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.*"

51. From the afore-quoted decisions, it becomes patently clear that mere production of a document or a calculation chart, in case of disproportionate assets case, does not prove by itself and must be proved on the threshold of preponderance of possibilities before arriving at a finding of guilt. This Court has also noted that the disciplinary proceeding was initiated based on the institution of the Vigilance P.S. Case No.82 of 2016. It is settled law that mere production of a document does not constitute proof thereof, if the memo of charge is issued on the basis of the complaint, the author of the aforesaid complaint must be produced in order to prove the contents thereof as has been held by the Hon'ble Supreme Court in the case of ***Bareilly Electricity Supply Co. Limited vs. Worksmen & Ors.*** reported as ***1971 2 SCC 617.***

52. Therefore, in the considered opinion of this Court, the enquiry officer has failed to examine the witnesses despite the fact that the petitioner had disputed the calculation of the alleged disproportionate assets. The charge of disproportionate assets is inherently a matter of correct arithmetic calculation, which ought to be proved on the threshold of preponderance of possibilities by the respondents and a mere production of calculation charts and statements could not suffice. A document or a calculation cannot prove by itself, in case of an allegation of disproportionate asset, since inferences have to be drawn regarding the correct calculation. In the present case, the petitioner has not only disputed the correctness of the calculation but to a limited extent the respondents have themselves have admitted and corrected the calculation, however, neither the final calculation has been made error free nor the calculation has been proved by leading evidences and examining witnesses in support thereof. This omission in the enquiry become fatal owing to the material discrepancies of double counting, miscalculation and unsupported valuation but also more importantly, on account of non-examination of witnesses in support of the calculation and this goes to the very root of the allegation, thereby vitiating the enquiry report and the consequential order of punishment.

53. The enquiry officer has arrived at a finding of guilt regarding disproportionate assets, to the limited extent of Rs.19,21,992/- against the petitioner, however, it is inescapable that none of the witnesses have been examined before drawing inference on the entries in the accounts, which assumes even more significance considering the admitted position that certain discrepancies had indeed crept in the calculation for disproportionate assets. Therefore, the enquiry proceedings stand vitiated on the score of being one of no evidence since the calculation matrix was never proved by witnesses.

54. Since this Court has already found that the enquiry proceeding to be vitiated and being a case of no evidence, this Court deems it appropriate not to enter into other submissions raising questions about the jurisdictional competence of the Joint Commissioner, who had held and concluded enquiry.

55. Moreover, the learned Special Judge, Vigilance Court, Patna after duly appreciating the evidence on record including the depositions of the prosecution witnesses therein had arrived at a categorical finding, that the prosecution had failed to prove the charge against the petitioner and accordingly, acquitted him honourably of all the charges levelled against him. It is important to note that for the present purpose the charges in both the disciplinary as well as criminal case were one and the same including the materials before the disciplinary authority as well as the learned Special Judge. This Court has noted that the learned Special Judge *vide* his judgment dated 12.06.2025 had adverted to the inconsistencies in the calculation of the alleged disproportionate assets and thereafter recorded his finding of acquittal.

56. The Hon'ble Supreme Court in the case of ***Ram Lal v. State of Rajasthan*** reported as ***(2024) 1 SCC 175*** has held as under:-

> ***"Legal position***
>
> *10. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the disciplinary authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. (See SBI v. A.G.D. Reddy (2023) 14 SCC 391. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the disciplinary authority have ignored material evidence and if it so finds, the courts are not powerless to interfere. (See United Bank of India v. Biswanath Bhattacharjee (2022) 13 SCC 329.*
>
> *11. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See State of T.N. v. S. Samuthiram (2013) 1 SCC 598.*
>
> *12.* ***<u>However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the</u>***

matter acquires a different dimension. If the Court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The Court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. *Each case will turn on its own facts. (See G.M. Tank v. State of Gujarat (2006) 5 SCC 446, State Bank of Hyderabad v. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (2013) 1 SCC 598.*

xxxx

Effect of acquittal in the criminal proceeding — Question 2

25. *With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW 2, PW 3, PW 6, PW 9 and PW 13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had*

submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24-4-1972 in place of 21-4-1974, and obtained recruitment to the post of Constable.

26. *Though the trial court convicted the appellant under Section 420 IPC, the appellate court recorded the following crucial findings while acquitting the appellant:"...Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21-4-1972 or 21-4-1974. Ext. P-3 is original marksheet, in which, the date of birth of accused has been shown as 21-4-1972 and same has also been proved by the witnesses examined on behalf of the prosecution.Whatever the documents have been produced before the court regarding the date of birth of 21-4-1974 are either the letters of Principal or are duplicate TC or marksheets. Neither the prosecution has produced any such original documents in the subordinate court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the examination form of Secondary, and nor after bringing the original records from the witnesses concerned, same were got proved in the evidence. In these circumstances,*

this fact becomes doubtful that date of birth of the accused was 21-4-1974, and the accused is entitled to receive its benefit. In the considered opinion of this Court, the conviction made by the learned subordinate court merely on the basis of oral evidence and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused. Resultantly, on the basis of aforesaid consideration, the present appeal filed by the appellant-accused is liable to be allowed."(emphasis supplied)

27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Ext. P-3 — original marksheet of the 8th standard, the date of birth was clearly shown as 21-4-1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21-4-1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge (see S. Samuthiram (2013) 1 SCC 598.

28. Expressions like "benefit of doubt" and *"honourably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Ext. P-3, the original marksheet carries the date of birth as 21-4-1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The Court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.*

29. We are satisfied that the findings of the Appellate Judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" — in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said *to be "not proved" when it is neither "proved" nor "disproved" (see Vijayee Singh v. State of U.P. (1990) 3 SCC 190.*

30. *We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (2006) 5 SCC 446.*

31. *Apart from the above, one other aspect is to be noted. The enquiry officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Ext. P-4 referring to the date of birth as 24-7-1974. Jagdish Chandra PW 1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the enquiry officer, is of some other Ram Lal.*

32. *This issue need not detain us any further*

because it is not the case of the department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8th standard marksheet. Shravan Lal, PW 4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet.

33. In view of the above, we declare that the order of termination dated 31-3-2004; the order of the appellate authority dated 8-10-2004; the orders dated 29-3-2008 and 25-6-2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

34. Accordingly, we set aside the judgment of DB Special Appeal (Writ) No. 484 of 2011 dated 5-9-2018 [Ram Lal Choudhary v. State of Rajasthan, 2018 SCC OnLine Raj 3031]. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as back wages are concerned, we are inclined to award the appellant 50% of the back wages. The directions be complied with within a period of four weeks from today."

57. Recently, the Hon'ble Supreme Court in the case of ***Maharana Pratap Singh (supra)*** has held as under:-

> *"**47.** While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in G. M. Tank (supra), since reinforced by a decision of recent origin in Ram Lal v. State of Rajasthan (2024) 1 SCC 175"*

58. In the present case, it appears that the charges, evidence, witness and the circumstances in both the departmental proceeding and the criminal proceeding are identical and therefore, the findings in the disciplinary proceeding would become further unsustainable in view of honourable acquittal of the present petitioner in the criminal case since the learned Special Judge, has on merits found that no offence could be established against the petitioner.

59. For the foregoing reasons, this writ petition is allowed. Accordingly, the impugned enquiry report of the Joint Commissioner dated 20.04.2023, the consequent impugned order of punishment dated 24.11.2023 as well as the order of the reviewing authority dated 07.03.2024, are hereby quashed and set aside. As a consequence, the petitioner shall be entitled to all the consequential benefits, including his consideration for any higher post or designation, in accordance with law.

60. Pending interlocutory application(s), stand disposed of.

61. The parties are directed to act upon the web copy of this judgment in accordance with law.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	18.03.2026
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