IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14387 of 2015

CNR No. BRHC010663122015

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Ram Bilas Sharma Son of Late Yugal Sharma, resident of village - Bajitpur, Police Station - Ghosi in the district of Jehanabad.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General of Police, Government of Bihar, Patna.
3. The Deputy Inspector General of Police, West Champaran at Bettiah.
4. The Superintendent of Police, West Champaran at Bettiah.
5. The Dy. Superintendent of Police Headquarter, West Champaran at Bettiah.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sunil Kumar
For the Respondent/s : Mr. Ram Balak Mahto

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

7 04-11-2026 Heard the learned counsel for the petitioner and the learned counsel for the State.

2. This writ application has been filed for the issuance of an appropriate writ or writs, order or orders, and direction or directions, for the following reliefs:

> ***(i)*** *For quashing the order contained in Memo No. 2734 dated 04.10.2008, passed by Respondent No. 4, whereby the petitioner has been awarded the punishment of withholding one annual increment, which shall be equivalent to two Black Marks.*
>
> ***(ii)*** *For quashing the order contained in Memo No. 808 dated 09.10.2014, issued under the signature of the*

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Deputy Inspector General of Police, West Champaran at Bettiah (Respondent No. 3), whereby the appeal preferred by the petitioner has been rejected and the order of punishment contained in Memo No. 2734 dated 04.10.2008 has been affirmed.

3. The brief facts of the case are that the petitioner was appointed as a Constable on 22.05.1970. Subsequently, he was promoted to the post of Assistant Sub-Inspector of Police on 01.04.1981 and thereafter to the post of Sub-Inspector of Police in August, 1994. In the year 2004, he was transferred to West Champaran district at Bettiah and, in June, 2006, he was posted as Sub-Inspector of Police at Bettiah Town Police Station. Ultimately, he retired from service in July, 2009.

4. While the petitioner was posted at Bettiah Town Police Station, an explanation was called for from him *vide* Memo No. 1134 dated 26.04.2008, issued by the Superintendent of Police, West Champaran at Bettiah, alleging negligence, disobedience and misconduct in connection with Shikarpur P.S. Case No. 49 of 2008, registered under Sections 304B and 34 of the Indian Penal Code. The allegation primarily related to recording the fardbeyan of the victim, namely, Sama Parveen, who had sustained burn injuries.

5. The petitioner submitted his explanation on

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28.04.2008. However, the same was not found satisfactory and a departmental proceeding was initiated against him. A charge memorandum containing four charges was served upon the petitioner and the then Deputy Superintendent of Police (Headquarters) was appointed as the Conducting Officer to inquire into the charges. Thereafter the petitioner submitted his explanation before the Conducting Officer on 15.09.2008 denying the allegations levelled against him. The Conducting Officer thereafter submitted his report to the disciplinary authority, namely, the Superintendent of Police, West Champaran at Bettiah (Respondent No. 4), who, *vide* Memo No. 2734 dated 04.10.2008, imposed upon the petitioner the punishment of withholding one annual increment, equivalent to two Black Marks.

6. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Deputy Inspector General of Police, West Champaran at Bettiah (Respondent No. 3). The appellate authority, however, *vide* Memo No. 808 dated 09.10.2014, i.e., after a lapse of nearly six years, rejected the appeal and affirmed the order of punishment.

7. It is pertinent to note that when this writ application was taken up on 11.09.2015, a Co-ordinate Bench of this Court,

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upon the specific grievance of the petitioner regarding non-supply of the inquiry report, granted time to the State to take specific instructions and file a counter affidavit as to whether the inquiry report was served upon the petitioner and whether he was given a notice for filing his reply to the findings recorded therein. Pursuant thereto, a counter affidavit was filed on 26.09.2016 and a supplementary counter affidavit on 01.07.2019 on behalf of Respondent No. 4.

8. Learned counsel appearing on behalf of the petitioner submits that the impugned order of punishment is wholly illegal, arbitrary and unsustainable in the eyes of law, having been passed in gross violation of the principles of natural justice and without following the prescribed procedure governing departmental proceedings. It is submitted that the petitioner had an unblemished service record and, during his long tenure of service, he was successively promoted from the post of Constable to Assistant Sub-Inspector and thereafter to Sub-Inspector of Police. His services had been appreciated by the authorities concerned and no complaint had ever been raised against him prior to the initiation of the present departmental proceeding.

9. Learned counsel for the petitioner further submits

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that the departmental proceeding originated from the allegation that the petitioner, while recording the *fardbeyan* of the victim, *Sama Parveen*, in connection with Shikarpur P.S. Case No. 49 of 2008, had recorded an incorrect version of the incident with an intention to protect the accused persons. It was alleged that the victim had sustained approximately 80% burn injuries and was not in a condition to make a statement. It was also alleged that incorrect particulars regarding the date of marriage and occupation of the victim had been recorded in the fardbeyan. It is contended that the petitioner was neither afforded a proper opportunity to cross-examine the witnesses nor was the list of witnesses duly supplied to him. The defence taken by the petitioner was not properly considered by the Conducting Officer.

10. Learned counsel for the petitioner specifically submits that a copy of the inquiry report was never furnished to the petitioner before passing the order of punishment. It is further submitted that the aforesaid assertion has not been denied in the counter affidavit filed on behalf of the State. It is contended that non-furnishing of the inquiry report deprived the petitioner of an effective opportunity to controvert the findings recorded by the Conducting Officer before the disciplinary

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authority arrived at its conclusion. Consequently, the entire departmental proceeding, including the order of punishment and the consequential appellate order, stands vitiated.

11. In support of his submission, learned counsel places reliance upon the judgment of the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad & Others v. B. Karunakar & Others***, reported in ***(1993) 4 SCC 727.***

12. It is lastly submitted that the petitioner has already retired from service in July, 2009 and, therefore, remitting the matter for a fresh departmental proceeding after such a long lapse of time would serve no useful purpose. Learned counsel submits that the impugned orders are liable to be quashed and the petitioner is entitled to all consequential service and retiral benefits.

13. Per contra, learned counsel appearing on behalf of the State, relying upon the counter affidavit and supplementary counter affidavit filed on behalf of Respondent No. 4, submits that the departmental proceeding was conducted in accordance with law and the petitioner was afforded adequate opportunity to defend himself. It is submitted that the petitioner was supplied with the charge memorandum, relevant documents and list of witnesses. The witnesses were examined in his presence on

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20.06.2008 and 10.09.2008, and he was afforded an opportunity to cross-examine them. Thereafter, the Conducting Officer called for his final explanation, which was submitted by the petitioner on 14.09.2008. Upon consideration of the materials available on record and the petitioner's defence, the charges were found proved and the disciplinary authority imposed the punishment in question. The appellate authority also considered the appeal and affirmed the punishment.

14. I have considered the rival submissions advanced on behalf of the parties and perused the materials available on record. The central point that arise for consideration is whether the inquiry report was furnished to the petitioner before the disciplinary authority recorded its findings and imposed the punishment, and if not, whether such non-supply has caused prejudice to the petitioner.

15. In this regard, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad & Others v. B. Karunakar & Others (Supra),*** wherein the Constitution Bench of the Hon'ble Supreme Court has held as follows:-

> ***"29.*** *Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary*

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authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. *Hence the incidental questions raised above may be answered as follows:*

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others

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are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report

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may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

31. *Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside*

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> *or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.*

16. The Hon'ble Supreme Court has, however, clarified that non-furnishing of the inquiry report does not automatically render the order of punishment invalid. The Court is required to examine whether prejudice has actually been

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caused to the delinquent employee on account of such non-furnishing. If the Court finds that furnishing of the inquiry report would have made a difference to the result of the case, interference with the order of punishment would be justified.

17. In the present case, the petitioner has specifically pleaded that the inquiry report was never served upon him before the order of punishment was passed. This Court, by its order dated 11.09.2015, called upon the State to specifically answer this very question on affidavit. The counter affidavit filed on 26.09.2016 and the supplementary counter affidavit filed on 01.07.2019, though they set out the stages of the inquiry in some detail, are conspicuously silent on the service of the inquiry report. It is pertinent to note that neither affidavit asserts that the report was furnished to the petitioner, nor does either annex any forwarding letter, acknowledgment or memo evidencing such service. Learned counsel for the State, upon a pointed query, has also not been able to demonstrate from the record that the report was ever supplied to the petitioner. An assertion which the State was specifically directed to meet, and which it has not denied in two affidavits filed over a span of several years, must be taken as admitted. Upon perusal of the records of the case, this Court finds that the inquiry report was

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not furnished to the petitioner before the disciplinary authority arrived at its conclusion on the charges.

18. The right recognized in ***Managing Director, ECIL, Hyderabad v. B. Karunakar (supra)*** is attracted where the inquiry officer is a person other than the disciplinary authority. That is admittedly the position here, the inquiry was conducted by a Conducting Officer, who submitted his report to the Superintendent of Police, and it is the Superintendent of Police who, on the strength of that report, imposed the punishment. The petitioner had denied all four charges before the Conducting Officer. The findings of the Conducting Officer on those charges in particular, on the condition of the victim at the time her *fardbeyan* was recorded and on the particulars of her marriage and occupation were the sole foundation on which the disciplinary authority proceeded. The petitioner never saw those findings before they were acted upon and was thus denied the opportunity, which the Constitution Bench has held to be an integral part of the right of defence, to point out to the disciplinary authority the errors, omissions and infirmities in the report and to persuade it not to accept the findings.

19. The Constitution Bench has cautioned that prejudice cannot be presumed and where the inquiry report has

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not been supplied, the Court should ordinarily ensure that the same is furnished to the delinquent employee and afford him an opportunity of being heard on the question of prejudice. However, such a course is not available in the present case, particularly in view of the respondents' own default. Despite the specific direction issued by this Court on 11.09.2015, the respondents have failed to place the inquiry report on record even today, more than eleven years thereafter. The inquiry report, which has been annexed to the counter affidavit, has been perused, and the petitioner has also been heard with regard to its contents. The report records the charges as proved essentially on the basis of the medical opinion regarding the extent of burns and the statements of the family members, without adverting to or considering the defence taken by the petitioner. These are precisely the aspects on which the petitioner was entitled to an opportunity of hearing before the disciplinary authority. The respondents, having withheld the inquiry report from the delinquent employee at the stage of the disciplinary proceedings and thereafter having failed to produce the same before this Court despite a specific direction, cannot now be permitted to contend that its supply would have made no difference to the outcome of the proceedings. The prejudice

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caused to the petitioner is, therefore, real and substantive, and not merely technical. The appellate authority, which was under an obligation to examine whether the disciplinary proceedings had been conducted in conformity with the principles of natural justice, affirmed the punishment without addressing this fundamental infirmity. Consequently, the appellate order dated 09.10.2014 is also vitiated by the same illegality.

20. It may be clarified that the right to receive the inquiry report is distinct from, and survives independently of, the requirement of a second show-cause notice against the proposed penalty. The latter requirement stood dispensed with upon the amendment of Article 311(2) of the Constitution by the Constitution (Forty-second Amendment) Act, 1976, as explained in ***B. Karunakar (supra)*** itself. The former, however, is a facet of the reasonable opportunity to defend oneself against the charges, which the Constitution Bench has held to be available to every delinquent employee, whatever the nature of the punishment and whether or not the governing rules provide for it. The absence of any requirement of a second show-cause notice, therefore, affords no answer to the petitioner's grievance.

21. The next question is whether the matter should be remitted to the disciplinary authority to proceed from the stage

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of furnishing the inquiry report, as ordinarily contemplated in paragraph 31 of ***B. Karunakar (supra)***. The question whether a case is fit for remand is no longer at large in this Court. The Full Bench of this Court in ***Manisha Kumari & Ors. v. State of Bihar & Ors. reported as 2026 (5) PLJR 580 : 2026 SCC OnLine Pat 10708*** (LPA No. 1324 of 2019, decided on 16.09.2026) has held that remand is a device for curing a technical defect so as to avoid prejudice, and is not to be resorted to as a matter of course or to afford the authority a fresh opportunity to make good its own laxity, and that the writ Court must record a finding on the fitness of the case for remand. The relevant passages read as follows:

22. Applying the aforesaid principles, this Court records the finding that the present case is not a fit one for remand, for the following reasons. First, the punishment in question is a minor one, i.e., withholding of one annual increment, equivalent to two Black Marks, and the petitioner superannuated in July, 2009 itself, i.e., within nine months of its imposition. The penalty, in so far as it operated upon his pay, spent itself long ago, and what survives is only its effect upon his retiral benefits. Second, the order of punishment was passed on 04.10.2008, the appeal took six years to be decided, and the

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writ application has been pending since 2015, at this belated stage, a fresh proceeding against a retired Sub-Inspector in respect of an incident of April, 2008, would be an exercise in futility. Third, the infirmity in the proceeding was brought to the notice of the State by this Court on 11.09.2015, and the State has, in the eleven years since, neither pleaded service of the report nor produced it, the default is entirely that of the respondents, and a remand would only reward it. In such circumstances, the remedy of remand would, in the words of the Full Bench would serve to cover the laxity of the respondent authority rather than cure a technical defect, and this Court therefore declines to adopt it.

23. In view of the aforesaid facts and circumstances, this Court finds that the impugned order of punishment contained in Memo No. 2734 dated 04.10.2008 and the consequential appellate order contained in Memo No. 808 dated 09.10.2014 cannot be sustained in the eyes of law.

24. Accordingly, the writ application is allowed. The order contained in Memo No. 2734 dated 04.10.2008, passed by Respondent No. 4, as well as the appellate order contained in Memo No. 808 dated 09.10.2014, passed by Respondent No. 3, are hereby quashed and set aside.

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25. As a consequence of the quashing of the order of punishment, the annual increment withheld under Memo No. 2734 dated 04.10.2008 shall stand restored to the petitioner with effect from the date on which it fell due, and the two Black Marks shall stand expunged from his service record. The respondents shall refix the pay of the petitioner as on the date of his superannuation on that footing, revise his pension and other retiral benefits accordingly, and pay the arrears of the differential amount to him. The entire exercise shall be completed within a period of twelve weeks from the date of receipt/production of a copy of this order, failing which the arrears shall carry interest at the rate of six per cent per annum from the date of expiry of the said period until payment.

26. There shall be no order as to costs.

27. Let a copy of this order be communicated to the Director General of Police, Bihar through FAX or e-mail for immediate compliance.

(Sandeep Kumar, J)

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