

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2997 of 2021

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Kartik Kumar Jha Son of Late Shiv Narayan Jha Resident of Village-
Mohanpur, P.S.-Bakhtiyarpur District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Rural Development, Government of Bihar, Patna.
2. The Divisional Commissioner, Koshi Division, Saharsa,
3. The District Magistrate, Saharsa.
4. The Sub-Divisional Officer, Simri Bhakhtiyarpur, District-Saharsa.
5. The Circle Officer, Salkhua, District-Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Pramod Mishra, Rohit Ranjan, Sumit Kr,
Advocates
For the Respondent/s : Mr.Navnit Kr, AC to GP XVIII

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 27-02-2026

Heard the parties.

2. The present writ petition has been filed for the
following reliefs:

“i) A writ in the nature of certiorari setting aside the order bearing Memo No. 1160 dated 12.09.2016 passed by Disciplinary Authority (Respondent No. 3), whereby and where under in contemplation of a disciplinary proceeding, petitioner has been inflicted punishment of dismissal from service without following the procedures prescribed under Bihar C. C. A. Rules, 2005 as also without examining any oral evidence presuming the alleged charges proved in gross violation of principle of natural justice.

ii) For setting aside the impugned order passed by appellate authority bearing Memo No.



1536 dated 18.12.2019 passed by Respondent Divisional Commissioner (Respondent No. 2), whereby and where under appeal case No 115/2016 has been rejected without considering the grounds raised in appeal on merits rather in mechanical manner without applying his judicial mind as the appellate order is itself non-speaking which is not proper in the eye of law.

iii) To reinstate the petitioner in service with all consequential monetary benefits.

iv) And/or any other relief or reliefs for which the petitioner is found entitled to in the facts and circumstances of this case.”

3. The brief facts giving rise to the present writ petition is that while the petitioner was posted as Upper Division Clerk -cum- Anchal Nazir in Block – Salkhua, Saharsa in the year 2013, on the basis of the report submitted by the Circle Officer, Salkhua, the petitioner was put under suspension vide order contained in Memo No. 1803 dated 10.10.2013 issued under the signature of the District Magistrate, Saharsa. Subsequently Memo of Charge was served upon the petitioner vide Letter No. 2086 – 2 dated 20.09.2019 issued under the signature of Sub-Divisional Officer, Simri Bakhtiyarpur whereby certain charges were levelled against the petitioner. The learned counsel for the petitioner submits that along with the Memo of Charge, no list of witnesses were given which is in complete violation of the provisions contained in Rule 17 (3) and (4) of the Bihar Government Servants (Classification,



Control & Appeal) Rules, 2005. Accordingly, the petitioner was issued show cause notice and he submitted his reply before the Disciplinary Authority, wherein he requested for providing the documents mentioned in Prapatra KA, but the same was never provided to the petitioner. The petitioner, apart from other documents, also asked for certain documents, to give his reply to the show cause notice issued to him, but the same was not supplied to him. The petitioner filed his reply to the show cause notice, issued to him on 26.12.2014. The Enquiry Officer proceeded with the departmental enquiry wherein the petitioner duly participated, but no witnesses were examined on behalf of the Presenting Officer to substantiate the charges levelled against the petitioner and the documents, which the petitioner was repeatedly asking for, were not provided to the petitioner. After enquiry, the Enquiry Officer submitted his report before the Disciplinary Authority and pursuant thereto, the petitioner was issued second show cause notice by the Disciplinary Authority. In compliance thereof, the petitioner filed his reply before the Disciplinary Authority, but the Disciplinary Authority, without even considering the second show cause reply filed by the petitioner, wherein he raised a grievance that despite repeatedly asking for the documents relied upon by the Presenting Officer and which were mentioned in the Memo of



Charge, the same were never provided to the petitioner, therefore, in absence of the same, he could not file a detailed reply, proceeded to pass the impugned order of punishment dismissing the petitioner from service from the date of issuance of the order impugned. Being aggrieved with the order of punishment dated 12.09.2016, the petitioner preferred statutory appeal before the Appellate Authority, i. e. the Commissioner, Koshi Division, Saharsa, which was numbered as Service Appeal No. 115 of 2016. The appeal preferred by the petitioner was finally heard on 04.12.2019 whereby the Commissioner, Koshi Division, Saharsa, without considering the defence taken by the petitioner in his Memo of Appeal, proceeded to reject the appeal filed by the petitioner.

4. The learned counsel for the petitioner submits that the entire departmental proceeding was conducted in complete violation of the Rules 17 (3) (4), (11) (ii) and 17 (14) of the Bihar CCA Rules 2005, since along with the Memo of Charge, no list of witnesses were provided and in addition thereto, the documents, which have been mentioned along with Prapatra KA, were never provided to the petitioner. Further, since the Department did not give the list of witnesses, the petitioner was denied an opportunity to cross examine them, to rebut the charges, which were levelled



against him and the documents which were relied upon by the prosecution, were not proved, in absence of any witness to prove the same.

5. The learned counsel for the petitioner refers to and relies on a judgment passed by the Hon'ble Supreme Court of India reported in *(2010) 2 SCC 772 (State of UP & Others -Versus- Saroj Kumar Sinha)*. In Paragraphs No. 26 to 28, the Hon'ble Supreme Court has held as follows:

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

“7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would



clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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 un rebutted 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.”

6. The learned counsel for the petitioner further refers to and relies upon the judgment of Hon’ble Supreme Court reported in **(2009) 2 SCC 570 (Roop Singh Negi -Versus- Punjab National Bank & Others)** wherein the Hon’ble Supreme Court of India in Paragraph No. 14 has 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.”

7. The learned counsel for the petitioner relies on a judgment of the Hon’ble Division Bench of this Court dated 06.08.2024 passed in *L.P.A. No. 389 of 2024 (Ram Lagan Ram -Versus- The State of Bihar & Others)* wherein in paragraphs No. 16 and 17, the Hon’ble Division Bench has held as follows:

“16. We also notice the decision of the Hon’ble Supreme Court in the case of Roop Singh Negi -Versus- Punjab National Bank & Others reported in (2009) 2 SCC 570, which categorically held that mere production of documents is not proof even in a departmental enquiry and the contents of documentary evidence will have to be proved by examining witnesses. It was categorically held that an FIR in itself is not evidence without actual proof of facts stated therein. The Department could have examined the witnesses, as we noticed; the complainant, members of the trap team or even the independent witnesses to the trap, to prove the facts as stated in the FIR.

17. We find absolutely no reason to sustain the enquiry, the punishment imposed on the basis of such enquiry; in which there was absolutely no material produced as valid evidence. The order of dismissal and the order rejecting the appeal also hence, has to be set aside. We find the judgment of the learned Single Judge also to be flawed for having not correctly appreciated the law, on the facts coming out in the above case. We set aside the judgment of the learned Single



Judge and also find the enquiry to be not in accordance with law.”

8. Per contra, the learned counsel for the State submits that the departmental proceeding was conducted in accordance with law and the petitioner was given due opportunity to participate in the said departmental proceeding. Documents were produced and the petitioner deliberately kept on asking for non-relevant documents to delay the departmental proceedings, since the documents which were asked for by the petitioner, were not relevant for the enquiry. The learned counsel for the State further submits that in the departmental proceeding, the petitioner was given due opportunity and the Enquiry Officer, after a full fledged departmental enquiry, submitted his report and based on the said enquiry report, the petitioner was issued second show cause notice. The petitioner submitted his reply to the second show cause notice and the Disciplinary Authority, after considering the reply submitted by the petitioner, proceeded to pass the order of punishment since the charges levelled against the petitioner were grave in nature. The learned counsel for the State further submits that even the Appellate Authority, before passing the order dated 04.12.2019, considered the points taken by the petitioner in his Memo of Appeal and then finding no merit in the appeal, rejected the same.



9. Having heard learned counsel for the parties and after going through the records, this Court finds that while issuing Memo of Charge to the petitioner, the authorities concerned gave a go bye to the provisions contained in Rule 17 (3) and (4) of the Bihar CCA Rules 2005, since no list of witnesses on whom the Department intended to rely during course of departmental enquiry was given with the Memo of Charge, which denied an opportunity to the petitioner to cross examine the witnesses to rebut the charges levelled against him. Further, in absence of the witnesses, the documents, which were relied during enquiry, were not proved. The authorities also did not adhere to the provisions contained in Rule 17 (14) of the Bihar CCA Rules 2005, since on the date fixed for enquiry, no oral or documentary evidence, by which the Articles of Charges were proposed to be proved, were produced/adduced, by the Presenting Officer and even the documents which were relied upon by the Presenting Officer were not provided to the petitioner thereby the petitioner was denied an opportunity to rebut the charges, by referring to the documents and the documents were not proved by the witnesses, which resulted in denial of opportunity to the petitioner, to examine the witnesses, to rebut the charges, which were levelled by the authorities concerned. Further, the petitioner was denied an opportunity to



produce defence witnesses in support of his defence, which is also in the teeth of the provisions contained in the Bihar CCA Rules 2005.

10. Accordingly, the order contained in Memo No. 1160 dated 12.09.2016 passed by the District Magistrate, Saharsa and the order dated 04.12.2019 contained in Memo No 1536 dated 18.12.2019 passed in Service Appeal No 115 of 2016 by the Commissioner, Koshi Division, Saharsa, deserve to be set aside and are, accordingly, set aside.

11. The matter is remitted back to the Disciplinary Authority to proceed afresh from the defective stage, i. e. from issuance of Memo of Charge, if so desired and to conclude the departmental proceeding within a period of six months from the date of receipt/production of a copy of this order.

12. The writ petition is allowed in the aforementioned terms.

13. Pending application, if any, also stands disposed of.

(Ritesh Kumar, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2026
Transmission Date	NA

