

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13645 of 2021

Ashutosh Sharan S/o Late Ramnarayan Sharan Resident of Mohalla -
Bharatmilap Chowk, District- Chapra at Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of SC/ST Welfare,
Government of Bihar, New Secretariat, Patna.
2. The Director, Department of SC/ST Welfare, Govt. of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
5. The District Magistrate, West Champaran, at Bettiah.
6. The Deputy Director, Welfare SC/ST, Tirhut Division, Muzaffarpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19131 of 2021

Ashutosh Sharan S/o Late Ramnarayan Sharan, R/o Mohalla-Bharatmilap
Chowk P.S. Chapra Town District-Chapra at Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of SC/ST Welfare,
Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, SC/ST Welfare Department, Govt. of Bihar, Patna.
3. The Joint secretary, SC/ST Welfare Department, Govt. of Bihar, Patna.
4. The Director, Department of SC/ST Welfare, Govt. of Bihar, Patna.
5. The Divisional Commissioner, Tirhut Division, Muzaffarpur,
6. The District Magistrate, West Champaran, at Bettiah,
7. The Deputy Director, Welfare SC/ST, Tirhut Division, Muzaffarpur.
8. The District Welfare Officer, Muzaffarpur,

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 13645 of 2021)

For the Petitioner/s : Mr. Dudh Nath Singh, Adv.

For the State : Mr. Asit Kr. Jha, AC to GP2

For the AG : Mr. Bindhyachal Rai, Adv.

(In Civil Writ Jurisdiction Case No. 19131 of 2021)

For the Petitioner/s : Mr. Dudh Nath Singh, Adv.

For the State : Ms. Kumari Anita, GP3

Mr. Rajesh Kumar, AC to GP3



CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

21 17-04-2026 The writ applications have been filed for the
following relief:-

(CWJC No. 19131 of 2021)

i. For issuance of direction/directions or order/ orders or writ/ writs particularly in the nature of certiorari for quashing the order dated 30.09.2021 contained in Memo No.-2411 issued under the signature of Additional Secretary, Govt. of Bihar, Patna whereby and whereunder founded the charge proved against the petitioner and impose punishment of withholding the whole pension of the petitioner U/s 43 (B) of the Bihar Pension Rule and disposed of the proceeding initiated against him vide Order No. 108 dated 13.01.2021 without consideration of his explanation in response to second show cause as well as providing adequate opportunity of hearing to the petitioner.

ii. For issuance of direction or order or writ particularly in the nature of mandamus for commanding and directing the respondent authority to make full pension to the petitioner after quashment impugned order under challenge.”

(CWJC No. 13645 of 2021)

“i. For issuance of direction/directions or order/ orders or writ/writs particularly in the nature of mandamus for commanding and directing the respondent authority to make payment of pension and other retiral dues such as GPF, Gratuity, Leave



Encashment to the petitioner with statutory interest as well as penal interest for the period of unauthorized delay in payment from the date of retirement till the date of payment @ 12% compound interest.

ii. For any other incidental and consequential relief to which the petitioner found fit under the facts and circumstances of this case.”

2. Counsel for the petitioner, by referring to Annexure-8 as contained in letter no. 44 dated 28.02.2020, which is an inquiry report, submitted by the inquiry officer before the disciplinary authority, submits that the inquiry officer after due deliberation and taking into account the documents appended with the allegations forming part of the memo of charge, have not found the allegations to be true and, accordingly, report was submitted before the disciplinary authority for taking final decision in the matter.

3. It is next submitted that pursuant to the report having been submitted before the disciplinary authority, the disciplinary authority, after differing with the inquiry report and having recorded its difference of opinion, had issued show-cause to the petitioner vide Annexure-9, which is contained in Memo No. 2336 dated 23.09.2021.

4. It is next submitted that the second show-cause



reply was submitted by the petitioner through the whatsapp mode within the time stipulated and it is the case of the petitioner that the second show-cause reply, which was placed for consideration by the disciplinary authority, was not considered as would be evident from the impugned order and, therefore, it has been submitted by the petitioner that there has been perversity in the order impugned by which 100% pension has been forfeited.

5. Counsel for the petitioner next submits that even one week time was there for submission of second show-cause reply but, the authorities in haste passed the order on the date of submission of second show-cause reply through whatsapp and for ulterior reasons, the same was not considered.

6. Counsel representing State submits that the reply was not submitted and after the order was passed, the same was placed for consideration through whatsapp and, therefore, the consideration to the second show-cause reply could not form part of the impugned order.

7. This Court finds that there has been perversity in adjudication of the second show-cause reply filed by the petitioner and much less when there has been exoneration from all the charges by the inquiry officer and in a case where there



has been a detailed submission to the difference of opinion recorded by the disciplinary authority, it was incumbent upon him to have addressed such explanation which was filed by the delinquent as against the difference of opinion recorded by the disciplinary authority over the inquiry report which exonerates the petitioner.

8. In this context, the Hon'ble Apex Court in the case of ***Punjab National Bank and Ors. Vs. Shri Kunj Behari Mishra*** reported in ***1998(7) SCC 84***, has held as follows:-

"15. At this stage, it will be appropriate to refer to the case of State of Assam v. Bimal Kumar Pandit [AIR 1963 SC 1612] decided by a Constitution Bench of this Court. A question arose regarding the contents of the second show-cause notice when the Government accepts, rejects or partly accepts or partly rejects the findings of the enquiry officer. Even though that case relates to Article 311(2) before its deletion by the 42nd Amendment, the principle laid down therein, at p. 10 of the Report, when read along with the decision of this Court in Karunakar case will clearly apply here. The Court observed at SCR pp. 10-11 as follows: "We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article



311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority must, in such cases, be specified in the notice. But where the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has



so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.”

9. Considering the principles laid down in the case of ***Punjab National Bank (supra)***, this Court finds it appropriate to set aside the impugned order and directs the disciplinary authority to pass final order after considering the second show-cause reply which is appended with the writ application as Annexure-11 dated 30.09.2021 expeditiously and if required the petitioner may be given proper hearing in the said case and the petitioner would also be at liberty to supplement his explanation with supportive materials, if any.

10. The disciplinary authority before taking final decision would be at liberty to seek further explanation, if so required, and the petitioner is also at liberty to supplement his explanation with further supportive materials, which would be



essential for taking a final decision in the pending disciplinary inquiry as and when directed or if in his opinion found to be necessary to be placed for consideration by the disciplinary authority.

11. It is made clear that the pension and pensionary benefit for which the petitioner is entitled shall be settled within a period of two weeks in accordance with the provisions of Bihar Pension Rules, 1950 from the date of receipt/production of a copy of this order and further continuance and its entitlement shall be guided by nature of order passed in the pending departmental enquiry.

12. With the aforementioned observation and direction, both the writ petitions are disposed of.

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

(Ajit Kumar, J)

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