

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16583 of 2022

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Braj Kishor Sadanand son of Late Balram Prasad Yadav, Resident of
Village-Sonari, Police Station-Sirdala, Dist. -Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Additional Secretary, General Administration Department, Govt. Of Bihar, Patna.
3. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Dy. Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Under Secretary, General Administration Department, Govt. of Bihar, Patna.
6. The Commissioner, Purnia Division, Purnia.
7. District Magistrate, Kishanganj.
8. The Additional Collector, Kishanganj.

... ... Respondent/s

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Acts/Sections/Rules:

- Rule 17(2), 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005

Cases referred:

- *Roop Singh Negi vs Punjab National Bank & Ors*, reported in (2009) 2 SCC 570
- *Champaklal Chimanlal Shah Vs. The Union of India*, reported in AIR 1964 SC 1854
- *U.P. State Road Transport Corporation Vs. Vinod Kumar*, reported in (2008) 1 SCC 115
- *Union of India & Ors Vs Gyan Chand Chattar*, reported in (2009) 12 SCC 78]
- *Commissioner of Police, Delhi & Ors Vs Jai Bhagwan*, reported in (2011) 6 SCC 376

Writ petition - filed for quashing of order whereby petitioner has been inflicted with the punishment of dismissal from service and also declared ineligible for any appointment in future with the State Government. The petitioner also assailed the appellate order,

whereby the review petition preferred by the petitioner also came to be rejected.

While petitioner was posted as Senior Deputy Collector, a complaint was filed before the District Magistrate with an allegation of demand of illegal gratification in the name of District Magistrate.

Held - Preliminary enquiry report could not be the sole basis to arrive at a conclusion in a disciplinary proceeding to prove the charges without their being examination of any witnesses to support the contents of the report. (Para 19)

The amount of misappropriation may be small or big, it is the act of misappropriation that is the relevant. (Para 20)

Neither the complainant nor the members of the enquiry committee was examined during the course of departmental proceeding and thus the petitioner has not been afforded any opportunity to contradict the averments/ contentions made therein or to cross-examine the authors of the report. Non-examination of complainant during departmental proceeding leads to denial of an opportunity to a Government servant of cross-examination. (Para 21)

The memo of charge does not contain the list of witnesses and the charges are proved only on the basis of three member enquiry report. Thus, the disciplinary authority has given a complete go by to Section 17(3) and (4) of Rules, 2005. (Para 25)

The second show-cause notice issued by the disciplinary authority does not fulfill the mandatory requirement provided under Rule 18(2) of the Rules, 2005 inasmuch as the disciplinary authority by differing with the finding of the enquiry officer has relied upon the materials, which is apparently inadmissible in law. (Para 28)

Writ petition is allowed. (Para 31)

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7. District Magistrate, Kishanganj.
8. The Additional Collector, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Advocate with Mr.Vipin Kumar Singh, Advocate Mr. Ram Binod Singh, Advocate
For the Respondent/s	:	Mr. Md. Harun Quareshi, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 07-01-2025

This Court has heard Mr. Bindhyachal Singh, learned Senior Advocate along with Mr.Vipin Kumar Singh, learned Advocate for the petitioner and Md. Harun Quareshi, learned Advocate for the State.



2. The petitioner is aggrieved with the order dated 31.05.2022 contained in Memo No. 8580 whereby he has been inflicted with the punishment of dismissal from service and also declared ineligible for any appointment in future with the State Government. The petitioner also assailed the appellate order, contained in Memo No. 17575 dated 27.09.2022 whereby the review petition preferred by the petitioner also came to be rejected.

3. The facts leading to the filing of the present writ petition, as has been culled out from the materials available on record are summarized hereinbelow:

4. The petitioner on being declared successful in 39th Batch of the Bihar Public Service Commission had joined his services as Deputy Collector on 08.01.1996. While he was posted as Senior Deputy Collector, Kishanganj, a complaint was filed before the District Magistrate on 18.04.2014 by one Sri Rajiv Ranjan, the Executive Engineer (DRDA), Kishanganj with an allegation of demand of illegal gratification in the name of District Magistrate. To examine the veracity of the allegation, by the order of the District Magistrate, dated 21.04.2014, a Committee consisting of three officials was constituted. The Committee submitted its report on 28.06.2014



finding the allegation true. The aforesaid enquiry report is placed on record as Annexure-2 to the writ petition. In the aforesaid premise, a Memorandum of charge containing in Prapatra “Ka” was duly served upon the petitioner vide letter dated 18.09.2015, issued under the signature of Secretary, General Administration Department, Government of Bihar. The petitioner was asked to submit his show-cause explanation. In response thereto he submitted a detailed explanation denying the charges attributed to him along with the other relevant facts on 04.01.2016. An opinion has also been sought for from the District Magistrate, Kishanganj, who submitted its opinion vide Letter No. 374 dated 19.02.2020 concurring with the finding of the District Public Grievances Redressal Officer, Kishanganj. It is pertinent to state here that the Additional Collector-cum-District Public Grievances Redressal Officer, Kishanganj had categorically opined by submitting its report vide letter no. 35 dated 17.02.2020 mentioning therein that the three members committee report suffers from inconsistency and contradiction. The allegation against the petitioner with regard to the corruption was not found true. Both the aforementioned letters are marked as annexure-5 Series.

5. Considering the facts, aforementioned, the Under



Secretary, General Administration Department, Government of Bihar vide its Memo No. 5885 dated 19.06.2020 directed for a detailed enquiry under Rule 17(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the Rules, 2005”) and appointed the Commissioner, Purnia Division, Purnia as conducting officer whereas the Senior Officer nominated by the District Collector, Kishanganj, as Presenting Officer.

6. The petitioner submitted his explanation before the Conducting Officer on 04.08.2020 denying the charges, as leveled in the Memorandum of charge. On completion of the enquiry, the Commissioner-cum-Conducting Officer, Purnia Division, Purnia submitted its enquiry report on 25.05.2021; none of the charges were found proved against the petitioner. However, the Disciplinary Authority by differing with the findings of the Enquiry officer vide letter no. 7277 dated 19.07.2021 issued second show-cause notice to the petitioner. The petitioner submitted his further explanation by referring to the reply upon his earlier show-cause explanation. On consideration of the enquiry report and the explanation of the petitioner, the Disciplinary Authority took a decision to dismiss the petitioner from services under Rule 14 of the Rules, 2005



and sought an approval from the Bihar Public Service Commission vide letter no. 10051 dated 06.09.2021.

7. In the meantime, the petitioner on being aggrieved and dissatisfied with the continuation of the departmental proceeding, as also the second show-cause notice preferred C.W.J.C. No. 21217 of 2021. The aforesaid writ petition, however, came to be disposed of vide order dated 16.02.2022, the copy of which is marked as Annexure-2 to the writ petition with a direction to the disciplinary authority to consider each of the contention of the petitioner raised in his explanation to the show-cause notice and to pass a speaking order in accordance with law. The Disciplinary proceeding is further proceeded and finally the impugned order, as contained in Memo No. 8580 dated 31.05.2022 has been passed inflicting punishment of dismissal of service upon the petitioner and held him ineligible for any future appointment with the Government.

8. The petitioner being aggrieved assailed the impugned order of dismissal by filing a review application, which also came to be rejected vide Memo No. 17575 dated 27.09.2022. Both the orders are under challenge before this Court.

9. Mr. Bindhyachal Singh, learned Senior Advocate



for the petitioner, while assailing the impugned orders primarily contended that the three members enquiry committee report, which is made the very basis for inflicting the order of dismissal cannot be treated to be an evidence to drive an erroneous conclusion with regard to the guilt of the petitioner in absence of any evidence, much less, the corroborative evidence in this regard. The report of the three member committee could not be held to be a part of the departmental proceeding, as the same has never been proved or substantiated by any of its member during the course of departmental proceeding.

10. The report was submitted in a haste while holding the petitioner guilty without giving him any opportunity to contradict the same or to cross-examine the authors of the report. Thus, the three members' committee report has no legal sanctity, apart from having been prepared behind the back of the petitioner and, as such, the same cannot be used for imposing major punishment by differing with the opinion of the conducting officer. To support the aforementioned contention, heavy reliance has been placed on a decision of the Hon'ble Apex Court in the case of **Roop Singh Negi vs Punjab National Bank & Ors**, reported in **(2009) 2 SCC 570**.

11. The learned Senior Advocate further drew the



attention of this Court to the memo of charge [Prapatra (Ka)] and contended before this Court that it does not contain the name of witnesses nor consist of the imputation of charges, as envisaged under the relevant provisions of Rules, 2005 and, as such, it is neither legal nor sustainable, being violative of the statutory provisions. It is also the contention of learned Senior Advocate that the complainant Sri Rajiv Ranjan, on whose complaint, the enquiry was conducted by the three member committee, pursuant to the order of the District Magistrate has never been examined during the departmental proceeding. Moreover, the credential of complainant was itself doubtful, whose contractual services had already been terminated on proved charges of financial corruption vide Memo No. 723 dated 24.05.20212 (Annexure-11).

12. Learned Senior Advocate has further contended that admittedly the enquiry report clearly demonstrate that the charges leveled in Prapatra (Ka) have not been proved against the petitioner, nonetheless, the disciplinary authority placing reliance upon the preliminary enquiry report issued second show-cause notice, which is wholly illegal and unsustainable. Moreover, the disciplinary authority also failed to consider the opinion of the Bihar Public Service Commission, Patna, who



categorically opined that the punishment of dismissal is disproportionate in the case of the petitioner considering the enquiry report and other documents available on record.

13. Referring to the impugned order of dismissal, it is further contended that the disciplinary authority did not consider the show-cause explanation submitted by the petitioner on arriving at a conclusion of finding the charges proved and in fact ignored all the relevant materials, including the enquiry report as well as opinion of the District Magistrate. The similar mistake has also been reiterated and re-affirmed by the appellate/reviewing authority while rejecting the review petition of the petitioner.

14. The learned Advocate for the State refuted the contention raised on behalf of the petitioner and submitted with all tenacity that the petitioner while holding the post of Senior Deputy Collector has misused his power and started extracted illegal money from the employees of MGNREGA in connivance with one Rajiv Ranjan, the Executive Engineer, District Rural Development Authority, Kishanganj. When this fact came into light, the enquiry was conducted by three men committee, who found the allegation true against the petitioner, leading to issuance of Memo of Charge after getting proper approval of the



disciplinary authority.

15. The enquiry report submitted by the conducting officer was examined by the disciplinary authority meticulously and after due consideration he disagreed on the following points of enquiry report, e.g. the statement of the complainant was recorded by the three member committee wherein he has admitted that on the direction of the petitioner he was asked to deposit Rs.1,00,000/- per block wise. The complainant also submitted that he tried to meet the District Magistrate, Kishanganj to inform the matter, but he could not meet him. Finally, when the matter got highlighted, the collected amount was returned to the concerned persons. The aforesaid facts is clear enough that illegal money had been collected by the complainant Executive Engineer at the behest of the petitioner.

16. Learned Advocate for the State admitted this fact that though the petitioner was not informed regarding constitution of three men committee, but this fact cannot be disapproved that pursuant to the direction of the District Magistrate, Kishanganj, a committee of three Senior Officers have been constituted, who found the petitioner had taken illegal money. Despite the aforesaid fact, the conducting officer could not take the matter sensitively and only based upon the report of



the presenting officer exonerated the petitioner from all the charges. Under such circumstances, the disciplinary authority by differing with the enquiry report further proceeded and issued second show-cause notice. The show-cause explanation of the petitioner did not find favour and finally on being found the petitioner has abused his post by taking illegal money in the name of District Magistrate, Kishanganj passed the impugned order of dismissal.

17. It is lastly contended that so far the opinion of the Bihar Public Service Commission is concerned, the same is not binding upon the disciplinary authority. Moreover, the Bihar Public Service Commission failed to disclose the reasons of the punishment being disproportionate. Thus, the advise without cogent reason cannot be sustained whereas the allegation against the petitioner has fully been proved. The impugned order of dismissal has also been affirmed by the reviewing authority. The entire departmental proceeding has been proceeded in accordance with law and the statutory prescription provided under Rules, 2005 and as such, no interference is required is the contention of the learned Advocate for the State.

18. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the



respective parties and also perused the materials available on record meticulously. Indubitably, on perusal of the materials available on record, this Court is of the opinion that the entire departmental enquiry leading to dismissal of the punishment is based upon three members committee enquiry report, which has corroborated the allegation of the complainant Sri Rajiv Ranjan.

19. True it is that the preliminary enquiry is for the purposes of collection of facts with regard to conduct of work of Government servant. In order to come to a conclusion as to whether the departmental proceeding can be initiated or not. The Hon'ble Supreme Court in the case of **Champaklal Chimanlal Shah Vs. The Union of India**, reported in **AIR 1964 SC 1854** has held that the preliminary enquiry even be held ex-parte, it is merely for the Government and on that stage the delinquent officer has no right to be heard. However, it is trite that the preliminary enquiry report could not be the sole basis to arrive at a conclusion in a disciplinary proceeding to prove the charges without their being examination of any witnesses to support the contents of the report.

20. This Court has also gone through the enquiry report submitted by the three member committee, as contained in Annexure-2 to the writ petition. The report clearly



demonstrates that the complainant Sri Rajiv Ranjan has submitted a written statement apart from recording of his oral statement, wherein he disclosed the name of eleven MGNREGA employees, but none of them have come forward to support the allegation. Even the person, whose name has been disclosed in the complaint that they have returned the money to the concerned employees, upon the matter being highlighted, their statements have also not been recorded. The entire report of the three member committee is based upon the complaint/written statement of Sri Rajvi Ranjan. Well settled it is that charge of corruption in a disciplinary proceeding requires to be proved to the hilt as it brings civil as well as criminal consequence upon the employee concerned. He would be liable to be prosecuted and would also liable to suffer severest penalty awarded in such cases, therefore, such a grave charge of quasi criminal nature is required to be proved beyond any shadow of doubt and to the hilt. In a case of such nature, there cannot be any other punishment than dismissal. The amount of misappropriation may be small or big, it is the act of misappropriation that is the relevant. [vide **U.P. State Road Transport Corporation Vs. Vinod Kumar**, reported in (2008) 1 SCC 115 and **Union of India & Ors Vs Gyan Chand Chattar**, reported in (2009) 12



SCC 78].

21. In the case in hand, admittedly neither the complainant nor the members of the enquiry committee was examined during the course of departmental proceeding and thus the petitioner has not been afforded any opportunity to contradict the averments/ contentions made therein or to cross-examine the authors of the report. Non-examination of complainant during departmental proceeding leads to denial of an opportunity to a Government servant of cross-examination is the rule mandated by the Hon'ble Supreme Court in the case of **Commissioner of Police, Delhi & Ors Vs Jai Bhagwan**, reported in **(2011) 6 SCC 376**.

22. The reliance placed on a decision of the Hon'ble Supreme Court in the case of **Roop Singh Negi** (supra) also covers the issue raised before this Court. The Hon'ble Supreme Court crystallizing the issue has categorically observed that the order of Disciplinary Authority as also the Appellate Authority must be supported by the reasons. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of Evidence Act could not be applicable in a dismissal proceeding, but the principles of



natural justice are required to be complied with. The Hon'ble Supreme Court has made it clear that suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

23. This Court thinks it apt and proper to encapsulate para.14 of the decision rendered in the case of **Roop Singh Negi** (supra) wherein the Hon'ble Supreme Court in no uncertain held that mere production of documents is not enough. The contents of documentary evidence has to be proved by examining the witnesses.

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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.”



24. Rule 17 of the Rules, 2005 provides the prescription for imposing major penalties. Rule 17(3) of the Rules, 2005 obligates the disciplinary authority that where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge. Rule 17 (3)(b) of the Rules, 2005 directs that the memo of charge must contain a list of documents by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. Rule 5 thereof further directs the disciplinary authority to deliver or cause to be delivered to the Government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit a written statement of his defence and to state whether he desires to be heard in person.

25. In the case in hand, admittedly the memo of charge does not contain the list of witnesses and the charges are proved only on the basis of three member enquiry report. Thus, the disciplinary authority has given a complete go by to Section



17(3) and (4) of Rules, 2005.

26. During the course of disciplinary proceeding, the opinion of the presenting officer has also been sought for, who did not submit any evidence in support of the charges, and thus taking note of the available materials, including the reply of the petitioner finally the enquiry officer submitted its report exonerating the petitioner from all the charges.

27. Well settled it is that neither the finding of the enquiry officer nor his recommendation are binding on the punishing authority. The disciplinary authority/ Government may agree with the report or may differ either wholly or partially from the conclusions recorded in such report. However, when the disciplinary authority, upon receipt of the enquiry report as per Rule 17(2), disagrees with the finding of the enquiry authority of any article of charge, it attracts Rule 18(2) of Rules, 2005, which necessarily mandates him to record its reasons for such disagreement and record its own finding on such charge, only when the evidences on record is sufficient for the purpose.

28. We have already discussed hereinabove that notwithstanding the fact the enquiry report of the three member committee having been prepared behind the back of the



petitioner, it cannot be treated as part of the departmental proceeding, as the same could not be proved or substantiated by any of its member during the course of departmental proceeding and, as such, cannot be said to be an evidence, much less a legally valid evidence to hold the petitioner guilty for the alleged charges. The second-show-cause notice issued by the disciplinary authority does not fulfill the mandatory requirement provided under Rule 18(2) of the Rules, 2005 inasmuch as the disciplinary authority by differing with the finding of the enquiry officer has relied upon the materials, which is apparently inadmissible in law.

29. This Court has also perused the impugned order whereby the petitioner has been inflicted with the punishment of dismissal from the service. Apart from non-consideration of the explanation of the delinquent petitioner, there is no discussion, much less any mindful examination with regard to the opinion of the District Magistrate and the enquiry report leading to exoneration of the petitioner from all the charges. Reviewing authority has also committed the identical mistake to arrive at the conclusion of affirming the order of the disciplinary authority of punishment, which is based upon no evidence. The entire departmental proceedings suffers from various



illegalities/infirmities, apart from defiance of the mandatory prescriptions, as provided under Rules, 2005, which is mandatorily to be followed while proceeding departmentally against any delinquent.

30. In view of the discussions made hereinabove and well settled position in law, this Court finds that the present case is a case of gross injustice meted out to the petitioner by the concerned respondents, thus left with no option, but to set aside the impugned order dated 31.05.2022, contained in Memo No. 8580, as also the order contained in Memo No. 17575 dated 27.09.2022.

31. Accordingly, the writ petition stands allowed with all the consequential benefits, within a period of three months from the date of this order.

(Harish Kumar, J)

Anjani/-

AFR	AFR
CAV DATE	03.12.2024
Uploading Date	07.01.2025
Transmission Date	

