

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17167 of 2023

Anish Kumar Mishra Son of Late Ashok Kumar Mishra, Resident of Jail Press Colony, Shastri Nagar, Police Station- Rampur, District - Gaya (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. Additional Collector, Departmental Proceedings-cum-Inquiry Officer, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate
For the Respondent/s : Mr. Rajeshwar Singh, G.A.-10

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 22-12-2025

Heard the learned counsel for the petitioner and the learned counsel for the State.

2. In this case, the petitioner has challenged the order dated 17.01.2022 passed by the District Magistrate, Patna, by which the petitioner has been awarded the punishment of stoppage of two increments with cumulative effect as well as the appellate order dated 18.05.2022 passed by the Divisional Commissioner, Patna, by which the appeal preferred by the petitioner against the aforesaid order of the District Magistrate has been dismissed.

3. It is the case of the petitioner that he was



appointed as Clerk in the office of the District Magistrate, Patna. The District Magistrate, Patna by his order dated 10.10.2018 suspended the petitioner in contemplation of disciplinary proceeding on the basis of a report submitted by the inquiry committee, for the charges of committing irregularities in mutation proceedings. Thereafter, *vide* letter dated 14.01.2019, the District Magistrate, Patna -cum-Disciplinary Authority, framed the memo of charge against the petitioner in which altogether four charges have been levelled against the petitioner. Thereafter, the Additional Collector was appointed as the Enquiry Officer and the Deputy Collector, Land Reforms, Patna, was appointed as Presenting Officer for conducting the departmental proceeding.

4. It is also the case of the petitioner that the Enquiry Officer directed the petitioner to file his written statement of defense and in pursuance thereof, he filed his written statement of defense and thereafter the Presenting Officer gave his comments on the show-cause reply filed by the petitioner. The Enquiry Officer, after enquiry, has submitted his enquiry report on 12.09.2019 exonerating the petitioner from all the charges. However, the Enquiry Officer *vide* order dated 09.01.2020 had recorded that the file is received back for re-



enquiry upon the direction/discussion with the disciplinary authority and thereafter, re-enquiry was conducted. Subsequently, the suspension of the petitioner was revoked on 17.02.2020. After re-enquiry, the report dated 08.06.2020 was submitted holding three out of four charges to be partly proved against the petitioner. Thereafter, a second show-cause was issued to the petitioner by the disciplinary authority on 03.12.2020, to which the petitioner replied on 10.02.2021. The District Magistrate, after considering the response of the petitioner, has passed the impugned order dated 17.01.2022 awarding the major punishment of stoppage of two increments with cumulative effect to the petitioner. Aggrieved by the aforesaid order of punishment, the petitioner preferred an appeal unsuccessfully.

5. Learned counsel for the petitioner submits that the disciplinary proceeding conducted against the petitioner is in complete violation of Bihar CCA Rules, 2005, inasmuch as, no list of witnesses and documents have been supplied to the petitioner along with memo of charge.

6. It has been submitted by learned counsel for the petitioner that the Enquiry Officer after a detailed enquiry, has submitted his enquiry report dated 12.09.2019 exonerating



the petitioner with a finding that none of the four charges were proved, however, vide order dated 09.01.2020 the Enquiry Officer in a very surprising manner directed the Conducting Officer to submit a para-wise reply to the show-cause submitted by the petitioner in light of the discussions and directions of the District Magistrate, Patna. Therefore, it is the submission of learned counsel for the petitioner that once an enquiry report dated 12.09.2019 was submitted by the Enquiry Officer, the same officer could not have directed the Conducting Officer to submit a para-wise reply merely based upon a discussions/direction from the District Magistrate. Further, the District Magistrate, being the disciplinary authority should have passed an order of disagreement with the enquiry report.

7. In support of this submission, he has replied upon the decisions of the Hon'ble Supreme Court rendered in the case of *Punjab National Bank vs. Kunj Bihari Mishra* reported in *1998 (7) SCC 84* and that has been followed in *Yoginath D. Bagde vs. State of Maharashtra and Anr.* reported in *(1999) 7 SCC 739* and has submitted that in both these judgments it has been held that the Disciplinary Authority while differing with the inquiry report must record his reasons of disagreement, but in the present case, that has not been done and



rather on a mere oral discussion / direction the re-enquiry has been done and thereafter, the second enquiry report was submitted.

8. Learned counsel for the petitioner has further submitted that the present disciplinary proceeding is a case of no evidence since neither any document has been adduced nor any witnesses have been produced either to prove any document or to depose against the petitioner in support of the charges alleged against him.

9. Lastly, it has been submitted by learned counsel for the petitioner that the appeal was heard by the then Divisional Commissioner, who was the same authority who had framed the memo of charge dated 14.01.2019 against the petitioner. Therefore, it is the submission of learned counsel that the appellate order is bad and unsustainable since it is passed by the very same person/authority who had framed the memo of charge and taken the decision for re-inquiry and had subsequently heard the appeal of the petitioner, which is impermissible since the appeal was not heard by an impartial appellate authority.

10. The learned counsel for the State has vehemently opposed the prayer of the petitioner and has



submitted that an enquiry team had been constituted *vide* letter dated 09.10.2018 in view of report published in the newspaper regarding irregularities committed in mutation proceedings in the Circle Office, Patna Sadar and during the enquiry it has been found that the petitioner, who was working as Clerk and other employees were engaged in fraudulently carrying out the mutation proceeding and thus the District Confidential Section, Patna *vide* letter dated 09.10.2018 directed the D.C.L.R., Patna Sadar to lodge an F.I.R. against the said persons. Therefore, the Collector, Patna *vide* memo dated 10.10.2018 suspended the petitioner under the provisions of the Bihar CCA Rules, 2005 and thereafter, the departmental proceeding was initiated against the petitioner and after finding three charge, out of four charges, to be partially proved, the punishment has been awarded, which has been affirmed in appeal also.

11. I have heard and considered the submissions of the parties and have also gone through the materials available on record.

12. In this case, the petitioner has been proceeded against on the allegation of committing irregularities in mutation proceeding. He has been suspended in contemplation of disciplinary proceeding by the District



Magistrate, Patna and thereafter, the disciplinary proceeding was initiated against him. It appears from the record that after the enquiry, the Enquiry Officer has submitted his detailed enquiry report dated 12.09.2019 holding that all the four charges levelled against the petitioner to be not proved. However, subsequently, on 09.01.2020 the Enquiry Officer records that a discussions took place with the disciplinary authority -cum- District Magistrate and thereafter he had directed the Conducting Officer to file a para-wise response to the show-cause reply submitted by the petitioner and thereafter effectively started re-enquiry against the petitioner.

13. The Hon'ble Supreme Court in the case of ***Yoginath D. Bagde vs. State of Maharashtra & Anr*** reported as ***(1999) 7 SCC 739*** in paragraph no. 29 has held as follows:

“29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of “hearing” in consonance with the principles of



natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.”

14. In the present case, it appears that thought the Enquiry Officer, after conducting the enquiry, had submitted his report dated 12.09.2019 finding all the four charges to be not proved against the petitioner but subsequently, on 08.06.2020 the same Enquiry Officer had again prepared an enquiry report finding three charges out of four charges to be partially proved against the petitioner. This subsequent enquiry report amounts to reviewing his own order which is wholly immensible since the



Enquiry Officer lacks the competence to review his own order. The Enquiry Officer after submitting the report becomes *functus officio* and as such can not review or modify the report from holding that the charges against the petitioner were not proved to that being partly proved.

15. Moreover, the disciplinary authority in order to disagree with the enquiry report ought to have arrived at an independent finding and recording separate and cogent reasons for differing with the enquiry report. This requirement is mandated under Rule 18(2) of the Bihar CCA Rules, 2005. However, in the present case, there is no order regarding disagreement with the enquiry report dated 12.09.2019 submitted by the enquiry officer. On this count also, the re-enquiry is held to be irregular and therefore the consequent orders stand vitiated.

16. At this stage, this Court has noted that in the first enquiry report the charges against the petitioner were found not proved and the re-enquiry which has already been held to be irregular also lacks evidence/ witnesses to establish the alleged charges on the threshold of preponderance of possibilities, therefore, the enquiry report and the impugned orders suffer from illegality, inasmuch as, the guilt of the petitioner has been



established based on no cogent evidence, which is unsustainable in view of law laid down by the Hon'ble Supreme Court in the case of *Roop Singh Negi vs. Punjab National Bank & Ors.* reported as *(2009) 2 SCC 570*.

17. This Court is of the considered view that since the present disciplinary proceeding has been conducted without any cogent evidence, it would be futile to remand the present case back to the respondent authorities for fresh consideration.

18. In view of the aforesaid discussions, this writ petition is allowed. Accordingly, the impugned order of punishment dated 17.01.2022 passed by the District Magistrate, Patna as well as the appellate order dated 18.05.2023 passed by the Divisional Commissioner, Patna, are hereby quashed and set aside.

(Sandeep Kumar, J)

Vikas/-
Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	13.10.2025
Uploading Date	22.12.2025
Transmission Date	

