IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3773 of 2017

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Anand Swarup S/o Late Tulsi Sahani, resident of Village Raghunathpur, P.S. Paru, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Additional Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Special Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Commissioner of Departmental Enquiry, Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Aakash Singh, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8
Mr. Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 21-04-2026

Heard learned Senior counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for the following relief(s) :

> *"1. (i) For quashing of the resolution contained in memo no. 4295 dated 18.3.2016 whereby and where under the disciplinary authority inflicted punishment of dismissal from service and no payment during the period of suspension except subsistence*

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allowance against the petitioner in connection with departmental proceeding no. 04/2011.

(ii) For quashing of the resolution contained in memo no. 10532 dated 1.8.2016 whereby the review petition dated 29.4.2016 filed by the petitioner against the order inflicting punishment dated 18.3.2016 was rejected and punishment order dated 18.3.2016 has been maintained.

(iii) For appropriate declarations (a) that the entire departmental proceeding conducted against the petitioner was in violation of principles of natural justice and fair play; (b) the Commissioner of Departmental enquiry instead of acting as impartial quasi judicial officer has acted as interested party and thus the enquiry report is vitiated on fact as well as in law; (c) denial of opportunity to cross examine the witness examined in the departmental enquiry vitiated the enquiry and enquiry report; (d) denial of opportunity to examine defence witness to establish innocence amounts to violation of the principles of natural justice and reasonable opportunity guaranteed under Article 311 (2) of the Constitution of India (e) the disciplinary authority while inflicting punishment of dismissal from service and

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reviewing authority while upholding the said decision was under obligation to independently exercise the power by considering the issues raised in second show cause reply and review petition and non-consideration thereof goes to the root of the case and rendered the decision inflicting punishment nullity in the eye of law.

(iv) For a follow up direction to the Respondents to reinstate the petitioner with all back wages.

(v) For any other relief or consequential reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case."

3. The case of the petitioner in brief is that on the recommendation of the Bihar Public Service Commission ('B.P.S.C' in short), he was appointed as Deputy Collector on 15.5.1989. In course of time, he was posted as Block Development Officer, Adapur in the District of East Champaran.

4. The State Government framed rules for absorption of *Shiksha Mitra* and for appointment of Panchayat Shikshak known as the *Bihar Panchayat Prarambhik Shikshak Niyojan Evam Seva Shart Niyamawali, 2006*. The B.D.O had no role to

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play in the entire selection process.

5. One Gopi Chand Ram made a complaint in writing to the petitioner about one Sudama Ram having procured appointment as Panchayat Shikshak on the basis of a forged certificate. Another complaint was made by Gopi Chand Ram on 7.12.2006. On enquiry being commenced, Sudama Ram tendered his resignation and thereafter Gopi Chand Ram was appointed as a Panchayat Shikshak.

6. On a further complaint by Gopi Chand Ram, the petitioner was apprehended on the allegation of taking bribe of Rs. 5,000/- at his residence. Vigilance Case no. 17 of 2007 came to be registered.

7. A memo of charge in *Prapatra-ka* was issued on 14.8.2007 levelling two charges against the petitioner i.e., (i) the petitioner demanded a bribe of Rs. 70,000/- from the complainant Gopi Chand Ram and (ii) on the complaint by the complainant to the vigilance, a trap was conducted and the petitioner was caught taking bribe.

8. The petitioner submitted his explanation to the memorandum of charge and the enquiry proceeded wherein the Commissioner, Departmental Enquiry, Bihar submitted his final enquiry report on 16.7.2015. The petitioner was served

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with a second show cause along with a copy of the enquiry report to which he filed his response on 7.9.2015.

9. The respondents came out with the order of punishment dated 18.3.2016 under the signature of the Additional Secretary, General Administration Department, Government of Bihar dismissing the petitioner from service.

10. The review preferred by the petitioner was rejected by order dated 1.8.2016 passed by the Special Secretary, General Administration Department, Government of Bihar.

11. It is against the order of dismissal dated 18.3.2016 and the order rejecting the review application on 1.8.2016 that the petitioner has preferred the instant writ application. The petitioner has also prayed for setting aside the enquiry report dated 16.7.2015 and reinstating him in service with all back wages.

12. It was submitted by learned Senior counsel appearing for the petitioner that the petitioner being an Officer of the Bihar Administrative Service was appointed by the Governor of Bihar. The memo of charge as contained in Annexure P/5 came to be issued by the Under Secretary of the Personnel and Administrative Reforms Department,

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Government of Bihar in absence of any order of the Governor of Bihar. Further, neither the list of witness nor the list of documents were included with the memo of charge which was a clear violation of Rule 17(3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 ('CCA Rules' in short). The petitioner was not given an opportunity to cross-examine the *Mukhiya* and the Panchayat Secretary. The complainant did not support the allegations of demand of bribe by the petitioner and the charge no.1 which pertain to allegation of the petitioner demanding bribe of Rs. 70,000/- was not proved in the opinion of the Enquiry Officer. It was submitted that the Enquiry Officer travelled beyond the memo of charge and found a charge proved which was not even part of the memo of charge. It was lastly submitted that during pendency of the writ application, by judgment dated 9.8.2018, the petitioner was acquitted in Special Case no. 9 of 2007 by the Special Judge, Vigilance (Trap Cases), Patna, which was the trial arising out of Vigilance Case no. 17 of 2007.

13. It was thus prayed that the orders impugned be set aside and the writ application be allowed with all consequential benefits.

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14. The application was opposed by learned counsel appearing for the respondents. Referring to the counter affidavit filed, it was submitted that while posted as B.D.O, Adapur in the District of East Champaran, the petitioner was apprehended accepting a bribe of Rs.5,000/- which lead to registration of vigilance case and the petitioner was placed under suspension by order dated 26.3.2007.

15. Article of charges were framed against the petitioner in Form-ka on 27.8.2007 and on receipt of explanation from the petitioner, it was decided to initiate a departmental proceeding against him. The Departmental Enquiry Commissioner was appointed as the Conducting Officer and he submitted his enquiry report dated 16.7.2015 where he found the charge no.2 to have been proved. The petitioner was served with a copy of the enquiry report to which he submitted his response.

16. Taking into consideration the facts and circumstances of the case, by order dated 18.3.2016, the petitioner was dismissed from service and it was further ordered that for the period of suspension, he would not be paid any other amount except the subsistence allowance already paid. The review preferred by the petitioner was

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considered by the authority and the same was rejected on 29.4.2016, keeping the order of punishment intact.

17. Learned counsel for the respondents submitted that there is no illegality in the orders impugned nor in the procedure in conduct of the departmental proceeding. There being no merit in the writ application, the same be dismissed.

18. Heard learned counsel for the parties and perused the material on record.

19. The relevant facts in brief are that while posted as B.D.O, Adapur in the District of East Champaran, on a complaint filed by Gopi Chand Ram, the petitioner was taken into custody in a trap case on the allegation of taking bribe of Rs.5,000/- and Vigilance Case no.17 of 2007 came to be registered against him.

20. A decision was taken to proceed against the petitioner in a departmental proceeding and the petitioner was served with the memo of charge dated 10.6.2009.

21. The charges against the petitioner was that he had demanded a bribe of Rs.70,000/-from the complainant for his appointment and on the complainant's expressing his inability to pay the said amount, he took a sum of Rs.70,000/- from one Sudama Ram and on the basis of a forged certificate

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issued an appointment letter to him. The second charge was that he was caught taking bribe of Rs.5,000/- and Rs. 2,000/- by a trap team of the Vigilance Investigation Bureau, he was taken into custody and for which a case being Vigilance P.S. Case no.17 of 2007 was registered.

22. The enquiry proceeded wherein the Conducting Officer submitted his final enquiry report on 16.7.2015 finding charge no.2 to have been proved.

23. The petitioner was served with a copy of the chargesheet in *Prapatra-ka* containing two charges brought on record as Annexure-P/5 to the writ application. Rule 17 (4) of the CCA Rules clearly provides that the disciplinary authority shall deliver or caused to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained. A perusal of the article of charge (Annexure-P/5) would show that it neither contains a list of documents nor a list of witnesses by which each of the charges are proposed to be sustained. The memo of charge by way of evidence only refers to the letter no. 166 dated 14.2.2007 of the Vigilance Bureau, Cabinet Vigilance

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Department and dated 9.2.2007 of the Vigilance, Patna as being enclosed. Thus not containing the list of documents or the witnesses by which each of the article of charge was proposed to be proved, the memo of charge was clearly in violation of the provisions as contained in Rule 17(4) of the CCA Rules.

24. On perusal of the final enquiry report as contained in Annexure-P/9 to the writ application, it would transpire that for the first time, the same mentions of as many as 76 documents in support of the charge levelled against the petitioner. Firstly, the enquiry report does not state or deals with the issue as to how the documents and its contents were proved by the witnesses. Further, the charges have been dealt with in clause-4 of the report. Interestingly, instead of proving the charge by leading oral and documentary evidence, the Conducting Officer has proceeded to deal with the defence of the petitioner in different sub-clauses numbered as 4.1, 4.2 and 4.3 and thereafter he gives his conclusion. Clauses 4.1 to 4.3 only proceed to give the reasons as to why the defence put forward by the petitioner is not sustainable. Thereafter in clause-5, the Conducting Officer, without any further discussion, concludes that charge no.2 is proved.

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25. The Hon'ble Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank**; **(2009) 2 SCC 570** 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."*

26. Further, a Division Bench of this Court in the case of **Devendra Prasad vs. State of Bihar & Ors.** (judgment dated 19.10.2023 passed in LPA no.1302 of 2017), following Roop Singh Negi (*supra*) observed as follows :-

> *"7. As has been held in Roop Singh Negi v Punjab National Bank and others; (2009) 2 SCC 570, the documents produced in a*

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departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon'ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the Inquiry Officer functions in the status of a quasi-Judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof."

27. Contrary to the settled law as laid down in the case of **Roop Singh Negi** (*supra*), there is no discussion whatsoever by the Conducting Officer with respect to the oral evidence lead, the documents and the contents thereof in support of the charges being proved and as to how the

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Conducting Officer came to the conclusion of charge no.2 being proved.

28. In view of the facts and circumstances of the case, in the opinion of the Court, none of the charges against the petitioner were proved as required in law and the Conducting Officer erred in coming to the conclusion that charge no.2 was proved.

29. In addition to the above shortcomings, it would also be relevant to keep in mind that the petitioner, who was a Block Development Officer, had no role to play in the appointment of a Panchayat Shikshak and further has been acquitted in the criminal case in the learned trial Court.

30. A perusal of the order dated 18.3.2016 inflicting the punishment of dismissal from service of the petitioner would show that additional charges were levelled against him that instead of acting on the request for guidelines received from the panchayat office, in conspiracy with the staff of the panchayat, he got the matter with respect to appointment of the complainant sent to the Block and kept it pending there. The disciplinary authority further states that when the petitioner did not take any positive action in getting the matter sent back to the panchayat and left it pending in the Block

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Office, by remaining a silent spectator, even though he did not take any bribe himself, he was in league with them.

31. The conclusions arrived at by the disciplinary authority in the order of punishment as stated herein above once again shows that the charges levelled against the petitioner are not being proved against him but the petitioner was now being punished for his inaction which was not part of the charge.

32. The order passed in review on 1.8.2016 also does not deal with nor answers the submissions raised by learned counsel for the petitioner. The authority considering the review filed by the petitioner was of the opinion that the petitioner should have acted on his junior officers i.e., the Block Education Extension Officer who was demanding bribe from the complainant. It may be reiterated that this was not the charge in the memo of charge in the instant departmental proceeding.

33. In view of the facts and circumstances stated herein above, in the opinion of the Court, this is a case of no evidence against the petitioner as also in categorical violation of the provisions as contained in Rule 17 of the CCA Rules.

34. Thus in view of the facts and circumstances of

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the case, neither the order of dismissal contained in memo no.4295 dated 18.3.2016 issued under the signature of the Additional Secretary, General Administration Department, Government of Bihar nor the order rejecting the review contained in memo no.10532 dated 1.8.2016 issued under the signature of the Special Secretary, General Administration Department, Government of Bihar are sustainable and are both quashed and set aside.

35. The petitioner is held entitled for all consequential benefits including the arrears of salary for the period of suspension as also for the period of dismissal.

36. The writ application is allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	03.02.2026
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Transmission Date	

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