

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18168 of 2013

Upendra Paswan Bihar State Food And Civil Supplies Corporation Limited,
Farbisganj District Araria Son Of Late Sundar Paswan Resident Of Village
Rampur Jalalpur West, P.S. and P.O.- Dalsinghsarai, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Food and Consumer Protection Department,
Government Of Bihar, Patna
3. The Managing Director, Bihar State Food and Civil Supplies Corporation
Limited, 5th Floor, Sone Bhawan, Veer Chand Patel Path, Patna
4. The Chief Finance Officer Cum Inquiry Officer, Bihar State Food and Civil
Supplies Corporation Limi 5th Floor, Sone Bhawan, Veer Chand Patel Path,
Patna
5. The Chief Vigilance Officer, Bihar State Food and Civil Supplies
Corporation Limited, 5th Floor, Sone Bhawan, Veer Chand Patel Path, Patna
6. The District Manager, Bihar State Food and Civil Supplies Corporation
Limited, Munger

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv Mr. Kanishk Kaustubh, Adv Mr. Lakshmi Kumari, Adv Mr. Rajnish Prakash, Adv Mr. Ankesh Kumar Singha, Adv Ms. Manisha Rathour
For the Respondent/s	:	Mr. Ashok Kumar Keshri
For the BSFC	:	Mr. Shailendra Kumar Singh, Adv Mr. Utkarsh Utpal, Adv

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 17-03-2026

Heard the parties.

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

*“I. For setting aside the inquiry report
dated 25-03-2009 submitted by the Chief
Finance Officer cum Inquiry (respondent*



no.4) Bihar State Food & Civil Supplies Corporation Limited, 5th floor, Sone Bhawan, Veer Chand Patel Path, Patna.

II. For setting aside the order contained in memo no. 5103 dated 19-06-2009 issued by the Managing Director, (respondent no.3) Bihar State Food & Civil Supplies Corporation Limited, 5th floor, Sone Bhawan, Veer Chand Patel Path, Patna whereby three punishment were awarded to the petitioner.

a. Petitioner's pay scale brought on its lowest scale.

b. Petitioner's promotion for next 5 years was withheld

c. The petitioner was warn that he shall be dismissed from service if he repeats similar kind of irregularities.

III. For setting aside the order contained in memo no. 11221 dated 29-12-2009 passed by the Managing Director, (respondent no.3) Bihar State Food & Civil Supplies Corporation Limited, 5th floor, Sone Bhawan, Veer Chand Patel Path, Patna whereby the petitioner's review petition was dismissed.

IV. For setting aside the order contained in memo no 1275 dated 27-02-2013 passed by the appellate authority i.e. the Principal Secretary, Food & Consumer Protection



Department, Government of Bihar (respondent no.2) whereby the appeal of the petitioner was erroneously dismissed.

V. For any other relief/reliefs for which the petitioners may be deemed entitled to”

3. The brief facts giving rise to the present writ petition are that while the petitioner was posted as Assistant Manager, State Food Corporation, Bettiah, the Vigilance Investigation Bureau conducted an enquiry with respect to certain irregularities in distribution of food grains from the Godown of the Bihar State Food Corporation (hereinafter referred to as BSFC) to the PDS dealers and then to the beneficiary. Pursuant thereto vide Letter No.1041 dated 28.02.2006 issued under the signature of the Secretary to the Government, Food Supplies and Commerce Department, Government of Bihar, Patna, a direction was issued to the Managing Directors/Senior Regional Managers of the B.S.F.C. to take disciplinary action against all the persons responsible for committing irregularities in distribution of food grains from the godown of the B.S.F.C. to the P.D.S. dealers and then to the beneficiary. A show cause notice was issued to altogether nine persons, including the petitioner vide Letter No.1660 dated 14.03.2007 issued under the signature of the Vigilance Chief of the Bihar State Food & Civil Supplies Corporation Limited,



Patna with respect to certain irregularities. The petitioner was charged with committing irregularities with regard to lifting at Sangrampur Godown for the year 1997-1998 to 27.05.1999. Although the show cause notice does not reveal any clear allegation against the petitioner, but even then, he filed/submitted his show cause reply before the authority concerned on 05.04.2007, denying all the allegations levelled against him. The authority concerned without even appreciating the reply filed by the petitioner, issued Memo of charge (Prapatra Ka) on 05.07.2007, wherein certain charges were levelled against the petitioner. Along with the Memo of Charge, list of witnesses and documents were also mentioned.

4. The learned counsel for the petitioner submits that after issuance of memo of charge to the petitioner, the departmental proceeding was initiated, however, no Presenting Officer was appointed by the department to present the case of the department. During course of the enquiry, two witnesses, who were named in the memo of charge, submitted their common written statement in all the proceedings, including the proceeding which was being conducted against the petitioner, whereby they had stated that they were not involved in the enquiry against the persons concerned. The Enquiry Officer



proceeded with the enquiry on the basis of the memo of charge, the show cause reply filed by the petitioner, the report of the District Manager, Munger and documents available on the record. No witnesses were examined during course of the enquiry by the Enquiry Officer, to support the case of the department and the Enquiry Officer proceeded with the enquiry, in absence of the Presenting Officer, without any material witness or documentary evidence. The Enquiry Officer, after enquiry, submitted his report on 25.03.2009, wherein he found two of the charges levelled against the petitioner to be proved, while he found one of the charges to be not proved.

5. The learned counsel for the petitioner submits that from perusal of the enquiry report it would transpire that the Enquiry Officer without any evidence of the witnesses and without being provided with any document, since no Presenting Officer was appointed, found the Charge No.01 to be proved against the petitioner. by recording that the reply of the petitioner is not satisfactory. Similarly, the Enquiry Officer proved the Charge No.03 by recording that the delinquent employee has failed to prove his innocence. The Enquiry Officer did not appreciate the fact that it is the department/Presenting Officer, who has to prove the allegation/charge levelled against



the delinquent, beyond all reasonable doubt, but contrary to the settled proposition of law, the Enquiry Officer proved the charges against the petitioner. by holding that the petitioner failed to prove his innocence. The disciplinary authority i.e. the Managing Director, Bihar State Food & Civil Supplies Corporation Limited vide Memo No.1832 dated 30.03.2009 issued second show cause notice to the petitioner and the same was replied by the petitioner by filing a detailed and exhaustive reply. Finally, the disciplinary authority vide his order contained in Memo No.5106 dated 19.06.2009 proceeded to award major punishment to the petitioner by reverting the petitioner to the Lowest Scale in his Pay Scale and further held that no promotion will be given to the petitioner for next five years and he was cautioned that if in future any irregularity will be committed by the petitioner, then immediately, after initiation of departmental proceeding, he will be terminated from service.

6. Being aggrieved with the punishment order dated 19.06.2009, the petitioner filed a review petition before the Managing Director of the Corporation, with a request to reconsider the punishment order passed against him, but the Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Patna vide his order contained in Memo



No.11221 dated 29.12.2009, proceeded to reject the review petition filed by the petitioner. The petitioner thereafter preferred an appeal before the Secretary/Principal Secretary, Food & Consumer Protection Department, Government of Bihar, Patna but, the appellate authority vide his order contained in Memo No.1275 dated 27.02.2013 without assigning any reason proceeded to reject the appeal preferred the petitioner.

7. The learned counsel for the petitioner submits that none of the charges were proved in the departmental proceeding, since no document was brought on record and no witness turned up for their oral testimony, to prove the documents or the allegations levelled against the petitioner, rather the Enquiry Officer recorded a finding that the charges have been proved, since the petitioner failed to disprove the charges. He further submits that the charges/documents must have to be proved its author and not by the delinquent. In the present case none of the charges have been proved, since no documents were produced in the departmental proceeding and no witnesses were examined, therefore, in absence of the Presenting Officer, witnesses and the documents, which is said to have been relied by the Enquiry Officer, were never proved by any of the witnesses/the author of the document.



8. The learned counsel for the petitioner submits that the entire departmental proceeding has been conducted in complete violation of the provisions contained in Rules 17 (3) & (4) of the Bihar Government Servants (CCA) Rules, 2005, since although the name of witnesses were mentioned in the charge memo, but they did not turn up to give their oral testimony and only filed a written submission, wherein they stated that they were not concerned with the enquiry, which resulted in denial of an opportunity to the petitioner to cross-examine the witnesses. Further, since the witnesses were not examined during the course of enquiry, the documents which were said to have been relied upon by the Enquiry Officer, were not proved and it is the mandate of the law that the documents must be proved by its author. Further, even the Presenting Officer was not appointed, therefore, the Enquiry Officer himself assumed the role of the Presenting Officer and proceeded to prove certain charges against the petitioner. The learned counsel for the petitioner submits that the entire departmental proceeding is a farce and vitiate on these scores alone.

9. The learned counsel for the petitioner refers to and relies upon a judgment of the *Hon'ble Supreme Court of*



India reported in **2009 (2) SCC 570 Roop Singh Negi Vs. The Punjab National Bank & Ors.** wherein in paragraph no.14 the Hon'ble Supreme Court of India 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."

10. The learned counsel for the petitioner further refers to and relies on a judgment dated 09.05.2017 passed by a Co-ordinate Bench of this Court in **C.W.J.C. No.610 of 2017 (Ashwini Kumar Vs. The State of Bihar & Ors.)** wherein in paragraph nos.09 to 12, it has been held as follows:-



*“9. Before I would proceed to deal with the issue raised and contested, I deem it necessary to refer to Rule 17 of "the Rules" which casts certain obligation on the disciplinary authority requiring a discharge before he proceeds to draw a proceeding for imposing a major penalty. Rule 17(3) of the Rules relates to drawing of a charge-sheet and which inter alia mandatorily requires the disciplinary authority not only to give a list of documents on which the charges are founded but also give a list of such witness by whom, the article of charges are to be proved. Annexure-18 is the charge-sheet and which simply refers to certain documents as evidence but no list of witness accompanies the charge-sheet through whom the department proposed to uphold the charges. In other words, the charge-sheet itself is de hors the statutory prescriptions for until such time that a list of witness accompanies a charge-sheet, the documents relied upon by the department suo motu cannot be simply relied upon for proving a charge as held by the Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank** since reported in (2009)2 SCC 570. That was a case in which the department was relying upon the First Information report to uphold the guilt but*



no witness was led by the Presenting Officer to prove the police report and it is taking note of such circumstance that the Supreme Court has proceeded to hold thus at paragraph 14 of the judgment:-

"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."
(Emphasis is supplied)

10. The second ground on which the proceeding stands invalidated is that even though a Presenting Officer was appointed vide Annexure-17 but he has failed in his



duty as cast upon him under Rule 17(14) of "the Rules" which inter alia stipulates that, "on the date fixed for the enquiry, the oral and documentary evidence by which the article of charges are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the enquiring authority. The enquiring authority may also put such questions to the witnesses as it thinks fit."

11. It is undisputed that in the present case no witness was led by the department nor any attempt was made by the Presenting Officer to get the documentary evidence proved during the course of the disciplinary proceedings. On the contrary, it is simply taking note of the departmental stand as reflecting from Annexure-21 of writ petition that the Departmental Enquiry Commissioner has proceeded to uphold the quilt and even though the enquiry report runs into almost 30 pages but the substance is lacking because the enquiry report is not



supported by any material. The role of an Enquiry Officer and the obligation cast upon him stands discussed in judgment of the Supreme Court rendered in the case of State of Uttar Pradesh vs. Saroj Kumar Sinha since reported in (2010)2 SCC 772 and I am tempted to reproduce paragraph 28 of the judgment which succinctly explains the legal position;

"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." (Emphasis is supplied)

12. Completing the circle of invalidation is the final order of dismissal which neither takes into consideration the defense so led by the petitioner nor the issue raised by him rather it proceeds to comment upon past conduct of the petitioner to form his opinion, which act of a disciplinary authority has already been deprecated by the Supreme Court in the judgment in the case of **Indu Bhushan Dwivedi vs. State of Jharkhand & Ors.** reported in (2010)11 SCC 278 [: 2010(3) PLJR (SC)197).

11. The learned counsel for the petitioner further refers to and relies on a judgment of a Hon'ble Division Bench of this Court dated 06.08.2024 passed in **L.P.A. No.389 of 2024 (Ram Lagan Vs. The State of Bihar and Ors.)** wherein in paragraph nos.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 Sing Negi Vs. Punjab National Bank 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.”

12. The learned for the petitioner further refers to and relies on a judgment of a Co-ordinate of this Court reported in **2021 (4) PLJR 490 (Ashok Paswan Vs. The State of Bihar & Ors.)** wherein in paragraph No.10, it has held as follows:-



“10. *The Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short "CCA Rules, 2005) lays down exhaustive procedure for imposition of major and minor penalties. Rule-17 of the CCA. Rules, 2005, which lays down the procedure for imposition of major penalty mandates in sub Rule-4 that the disciplinary authority shall 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 misbehavior and "a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defense and to state whether he desires to be heard in person". A charge containing allegation of demand or acceptance of bribe ordinarily cannot be proved in the absence of any oral evidence, unless such charge has been proved earlier in any other judicial or quasi judicial proceeding. It is against basic logic and comprehension that a charge relating to demand or acceptance of bribe can be established by a Department against a Government servant without any witness before the Inquiring*



Authority unless specifically admitted by the delinquent. As no witness was examined before the Inquiring Authority on behalf of the Department to establish the charge of demand or acceptance of bribe against the petitioner, the petitioner did not have any opportunity to cross-examine.”

13. The learned counsel for the petitioner further refers to and relies on a judgment passed by a Co-ordinate Bench of this Court reported in **2025 (1) BLJ 783 (Uma Shankar Ram Vs. The State of Bihar & Ors.)**, wherein in paragraph nos.15 & 19 to 21, it has been held as follows:-

“15. It is well settled that mere production of a document is not enough. The content of documentary evidence has to be proved by examining witnesses.

19. The role of the Enquiry Officer who is acting in a quasi judicial authority in a departmental/disciplinary authority is well founded that he is not supposed to be a representative of the department/disciplinary authority. His function is to examine evidence presented by the department, even in absence of delinquent official to see as to whether un rebutted evidence is sufficient to hold that the charges are proved.

*20. In the case of **Saroj Kumar Sinha***



(supra), the Hon'ble Supreme Court has highlighted the status and duties of the Enquiry Officer by holding that the employee should be treated fairly in any proceeding which may culminate in punishment being imposed upon him.

21. It would be apt and proper to reproduce the relevant paragraphs of the said decision, which are quoted hereunder-

"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 unrebutted 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.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the



departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.""

14. The learned counsel for the petitioner further



refers to and relies on a judgment passed a Hon'ble Division Bench of this Court in ***L.P.A.446 of 2024 (The State of Bihar & Ors. Vs. Vikash Kumar @ Vikas Kumar)*** wherein in paragraph nos.7 to 9 & 11 to 13 it has been held as follows:-

“ 7. We beg to differ, since the ground on which the dismissal order was interfered with, was not a technical defect in the conduct of the enquiry. It is only when the termination of an employee is faulted on a technical ground, there is need for a remand on the ground inter alia of violation of principles of natural justice; so as to resume the enquiry from the stage at which the technical defect is noticed. Where, in an enquiry carried out, there was no proper evidence led, the management cannot be allowed to correct its mistake by making a remand and permitting fresh evidence to be led to find the delinquent employee guilty of the misconduct.

*8. The decisions in **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588** and **ECIL v. B. Karunakar, (1993) 4 SCC 727**; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to*



the delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.

9.The non-furnishing of the report hence amounts to violation of principles of



natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

*11. The learned Single Judge has relied on **Union of India v. P. Gunasekaran; (2015) 2 SCC 610** from which we extract Paragraph 12 and 13:*

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings,



the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the



admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

*(i) **the finding of fact is based on no evidence.***

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience. (underlining & bold font supplied, for emphasis)

12. From the above extract it is very clear that the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no



evidence. If in every case where no valid evidence is led at the enquiry proceedings, there is a remand made, it would be offering a premium to the negligence of the Management/ Disciplinary Authority and condoning the levity with which the departmental enquiry was conducted. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings



without any valid evidence.”

15. Per contra, the learned counsel appearing on behalf of the Respondent nos.03 to 06 submits that on the basis of the report submitted by the vigilance department, a decision was taken to initiate departmental proceeding against the petitioner and a show cause notice was issued to the petitioner and others. The petitioner submitted his reply, which was considered by the competent authority and thereafter memo of charge was issued to the petitioner. After enquiry, the report was submitted on 25.02.2009, whereafter second show cause notice was issued to the petitioner on 30.03.2009. Along with the second show cause notice, the enquiry report was also provided to the petitioner. The petitioner filed his reply to the second show cause notice, which was considered by the disciplinary authority and after consideration of the same, the disciplinary authority proceeded to pass the impugned order of punishment. The petitioner filed review and appeal before the appropriate authority, however, the same were also reject after meticulous examination of the facts and the documents available on record.

16. The learned counsel appearing on behalf of BSFC refers to and relies on a Hon'ble Division Bench Judgment of this court in *L.P.A. No. 571 of 2018 (The State of Bihar Vs. Ram Tawakal Singh & Ors.)* wherein after



consideration of all the facts the Hon'ble Division Bench has held as follows:

“ In the light of aforesaid decisions and the fact that the penalty order has been set aside by the learned single judge on technicality and further there is alleged financial irregularities stated to have been committed by the respondent.

In the light of these facts and circumstances, order of the learned Single Judge is modified to the aforesaid extent in remanding the matter to the inquiring authority to commence inquiry from the defective stage and complete within a period of four months from the date of receipt of this order, failing which it is held that inquiry stands abated. The respondent is hereby directed to co-operate in conclusion of the inquiry from the defective stage. In this regard, inquiring/disciplinary authority is hereby directed to issue notice in advance for his appearance from time to time in order to complete inquiry within four months. Withheld pension amount shall be released in favour of Respondent within four months. Liberty to impose afresh penalty in the event of proving alleged charges.

17. Having heard the learned counsel for the parties



and after considering the materials available on record, this Court finds that although along with the memo of charge, list of witnesses and list of documents were mentioned, but out of three witnesses, only two witnesses came during the enquiry and filed their written submission before the Enquiry Officer, that they were not concerned with the enquiry. The witnesses were never examined during course of the Enquiry which is in complete violation of the provisions contained in Rules 17 (3), (4) & (14) of the Bihar Government Servants (CCA) Rules, 2005, since no opportunity was granted to the petitioner to cross-examine the witnesses, to rebut the charges levelled against him. Further even the Presenting Officer was not appointed, which resulted in the Enquiry Officer himself assuming the role of the Presenting Officer, which is not permitted in a departmental proceeding. Even the document which is said to have been relied by the Enquiry Officer, during course of enquiry, was not proved by its author, thereby the same cannot be said to be a reliable documents in absence of its author not proving it.

18. The Enquiry Officer or the Disciplinary Authority did not even consider the show cause reply filed by the petitioner and the disciplinary authority did not take into



consideration the defense taken by the petitioner, in his second show cause reply and without assigning any reason, for rejecting the explanation submitted by the petitioner, proceeded to pass the order of punishment against the petitioner. Similarly, the appellate authority has also not assigned any reason put forth by the petitioner and only on mechanical ground, rejected the appeal preferred by the petitioner.

19. Accordingly, on the basis of the consideration made above, the orders contained in Memo No.5106 dated 19.06.2009 issued under the signature of the Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Patna, Memo No.11221 dated 29.12.2009 issued under the signature of the Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Patna and Memo No.1275 dated 27.02.2013 issued under the signature of the Principal Secretary, Food & and Consumer Protection Department, Government of Bihar, Patna are fit to be set aside and are accordingly set aside. Further the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence and if in every case where no valid evidence is led at the enquiry proceeding, there is a remand made, it would be offering a premium to the negligence of the Management/Disciplinary



Authority and condoning the levity with which the departmental Enquiry concluded. It is the disciplinary authority who appoints the Enquiry Officer and Presenting Officer and it is expected that the Presenting officer would be well versed in the procedure and also be informed in the manner in which evidence has to be led before the Enquiry Officer, to prove the misconduct, alleged against the delinquent employee.

20. In the present case, even the Presenting Officer was not appointed. In a disciplinary proceeding, it is also the trite principal that the standard of proof is preponderance of probability as distinguish from proof beyond reasonable doubt, as would be required in a criminal prosecution. However, if there is no evidence led at the Enquiry Officer, there is no question of any preponderance of probability being drawn to find the allegations proved, nor can the delinquent be penalized on the basis of preemptory finding without any valid evidence. The disciplinary authority had an opportunity in a properly constituted enquiry proceeding and if in such a proceeding no evidence was led, the punishment of dismissal has to be found to be imposed on no valid evidence. Since the petitioner has superannuated on 29.08.2019, he would be entitled for all the benefits of grant of increment on the pay scale on which he was



working on the date of punishment i.e. 19.06.2009 and he will be considered for promotion, if otherwise found to be suitable. The entire exercise as stated above must be completed by the Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Patna within a period of three months from the date of receipts/production of a copy of this order.

21. The writ is allowed in the aforementioned terms.

22. Pending applications, if any, shall also stands disposed of.

(Ritesh Kumar, J)

krishnakant/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2026
Transmission Date	NA

