

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1673 of 2023

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Ramesh Prasad Diwakar Son of Late Gaya Prasad Diwakar, Resident of South Chakkar Maidan, Race Course, P.S. - Kazi Mohammadpur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Genral Administration Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar.
3. The Special Work Officer of the Government, General Administration Department, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya Cum the Inquiry Officer.
5. The Additional Collector, Revenue, Gaya Cum the Presenting Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Ranjeet Kr, Shikhar Mani, Kanishk Kaustubh,
Lakshmi Kri, Rajnish Prakash, Advocates

For the Respondent/s : Mr Dhurendra Kr, AC to GP V

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 08-04-2025

This petition has been preferred by the petitioner seeking the following relief:

“i. For setting aside the enquiry report submitted by the enquiry officer as contained in Letter dated 17.02.2021 whereby he found all the charges proved against the petitioner without there being any evidence in support of the charges.

ii. For setting aside the order contained in Resolution of the General Administration Department, Government of Bihar, Patna as contained in Memo No 5851



dated 13.04.2022 issued with the signature of the Special Works Officer of the Government, General Administration Department, Government of Bihar, Patna whereby the petitioner has been dismissed from service and has also been declared ineligible for future employment under the Government of Bihar.

iii. The petitioner further prays that after setting aside the enquiry report as well as the order of punishment he may be reinstated in service with all consequential benefit as he has not been in gainful employment after his dismissal from service.

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

2 Brief facts of the case are that the petitioner, who was posted as LRDC at Sherghati in the district of Gaya, was trapped by the Economic Offence Unit while receiving bribe of Rs 40,000/- from one Santosh Kumar and, accordingly, a first information report bearing EOU PS Case No 28 of 2012 has been registered for the offence under Sections 7/13 of the Prevention of Corruption Act. A departmental enquiry has also been initiated against the petitioner vide Resolution dated 03.04.2014 (Annexure 1). The petitioner appeared before the Enquiry Officer, denied the charges and requested for supply of the documents. However, the Department supplied incomplete set of papers to the petitioner. He continuously requested for supply of other documents which were never supplied to him. During the course of enquiry, no witness



was cited or examined by the Department. Even after that, the Enquiry Officer found the charges proved against the petitioner and filed his Enquiry Report dated 17.02.2021 (Annexure 4). On the basis of said, second show cause notice was issued vide Letter dated 09.02.2021 (Annexure 5). The petitioner filed written statement (Annexure 6) which was served on the respondents by the petitioner on 12.07.2021. The petitioner again denied the allegations, non-supply of documents and non-examination of witnesses (Annexure 6). The petitioner, thereafter, filed a writ petition being CWJC No 18157 of 2021 for setting aside the enquiry report but during pendency of the same, the petitioner was dismissed from service by Resolution dated 13.04.2022 (Annexure 7) and subsequently a review application filed by the petitioner was also rejected vide order dated 23.06.2022 (Annexure 9). The petitioner filed one interlocutory application in the said writ petition challenging the order of dismissal as well as order passed in the review. Later on, the said petition was dismissed as withdrawn vide order dated 12.12.2022 with liberty to the petitioner to file a fresh writ petition. Hence, this petition has been preferred by the petitioner.

3 It is submitted by the learned counsel for the petitioner that as per Rule 17 (4) of the Bihar CCA Rules, the Presenting



Officer has to prove the charges by way of oral and documentary evidence. The witnesses shall be examined by or on behalf of the Presenting Officer. The Presenting Officer remained present but failed to prove the charges. Since no oral and documentary evidence has been adduced by the Presenting Officer to prove the charges, as such, the entire proceeding stands vitiated and the charges, under the circumstances, stand not proved. Virtually, it is a case of no evidence but this aspect has not been considered by the Disciplinary Authority and the Reviewing Authority, while passing the order impugned. According to the counsel, the petitioner has not been gainfully employed from the date of his termination and, therefore, he deserves to be reinstated in service with full back wages and also the full salary for the period in which he remained under suspension.

4 Learned counsel for the respondents opposes the argument raised by the learned counsel for the petitioner and submits that taking into consideration the documentary evidence available on record and on the basis of admission made by the petitioner during the course of enquiry, the Enquiry Officer rightly arrived on the conclusion that both the charges levelled against the petitioner found proved. Thus, the order passed by the



Disciplinary Authority as well as the Reviewing Authority do not warrant any interference.

5 I have heard learned counsel for the parties. Perused the documents annexed with the petition as well as the counter affidavit submitted by the learned counsel for the State.

6 The charge memo (*Prapatra Ka*) issued to the petitioner which is annexed with the petition (running page 27 of the petition) clearly shows that with the charge memo, no list of witnesses was annexed nor any witness was cited by the Department. The enquiry report (Annexure 4) also shows that during the enquiry, no witness was examined by the Department and only on the basis of submission made by the Presenting Officer, the Enquiry Officer recorded his opinion.

7 There were two charges framed against the petitioner. Charge No 1 relates to taking bribe of Rs 40,000/- by the petitioner from the complainant. The Enquiry Officer, only on the basis of the crime registered against the petitioner, arrived on the conclusion that this charge has been duly proved against the petitioner. While recording his opinion, he further recorded that during the course of enquiry, on various dates, petitioner himself admitted the fact that he was caught hold with bribe amount. Further, the State has failed to point out any material which shows



that at any stage of the enquiry, the petitioner made such type of confession before the Enquiry Officer.

8 So far as the second charge is concerned, again the Enquiry Officer recorded his opinion that in spite of direction given by the Enquiry Officer, no defence has been adduced by the petitioner, therefore, indirectly he admitted this charge. The above finding recorded by the Enquiry Officer is also not in accordance with the record. For proving this charge also, no witness was examined and the documents which have been relied by the Enquiry Officer has not been tendered by any of the witness. Therefore, charge No 2 has also not been proved against the petitioner.

9 The Supreme Court in the case of *Satyendra Singh -Versus- The State of Uttar Pradesh and Another, 2024 SCC Online SC 3325*, reiterating the earlier view taken by it in the case of *Roop Singh Negi -Versus- Punjab National Bank and Others (2009) 2 SCC 570*, observed and held at Paragraph 17 as follows:

“17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negi and Nirmala J Jhala, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with major penalty, were totally vitiated and



non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.”

10 In the light of the above observations made by the Supreme Court in the above referred cases, on examination of the facts of the present case, it is clear that in his reply to the second show cause notice (Annexure 6), the petitioner categorically raised all these grounds, i e, non-supply of list of witnesses and documents, non-examination of witnesses by the Department and violation of the provisions of Bihar CCA Rules but the Disciplinary Authority, while passing the order of dismissal, has not considered any of the grounds raised by the petitioner nor the Reviewing Authority while deciding the review petition filed by the petitioner. Virtually, it is a case of no evidence and without any legal evidence rendered by the Department, the finding of guilt has been recorded by the Enquiry Officer and on the basis of said, the services of the petitioner have wrongly been terminated by the Disciplinary Authority.

11 Thus, the order of dismissal (Annexure 7) dated 13.04.2022 and the order of Reviewing Authority (Annexure 9) dated 23.06.2022 are liable to be set aside.

12 Accordingly, both the orders are hereby quashed and set aside.



13 The writ petition is allowed.

14 The petitioner is directed to be reinstated with all consequential benefits.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025
Transmission Date	NA

