

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8620 of 2024

Ramesh Prasad son of Sri Ramanand Prasad resident of village Murgaon, Irki,
P.S.- Belaganj, District Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department (Prison), Bihar, Patna.
2. The Additional Chief Secretary, Home Department (Prison), Bihar, Patna.
3. The Joint Secretary Cum Director, Prison and Correctional Services Directorate, Home Department (Prison), Bihar, Patna.
4. The Joint Commissioner, Department Enquiry, Patna Division, Patna.
5. The Inspector General (Prison and Correctional Services), Bihar,
6. The District Magistrate, Vaishali,
7. The Superintendent of Police, Vaishali,
8. The Sub Divisional Officer, Vaishali,
9. The Sub Divisional Police Officer, Vaishali.

... .. Respondents

Appearance :

For the Petitioner : Mr. Siddhartha Prasad, Advocate
For the Respondents : Mr. Amish Kumar, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 13-01-2026

In this case, the petitioner has challenged the punishment order dated 25.05.2022 issued by the Joint Secretary-cum- Director (Adm.) whereby the petitioner has been awarded the punishment of withholding of five (5) increments with cumulative effect as well as the order dated 01.09.2022, also issued under the signature of the Joint Secretary-cum-Director (Adm.) by which the review preferred by the petitioner against the aforesaid punishment order has been rejected. The



petitioner has further prayed that the departmental proceeding initiated against him in pursuance of the memo of charge contained in memo no. 6159 dated 11.09.2020 be quashed and to direct the respondents to provide all consequential benefits. Furthermore, the petitioner has also challenged the show cause notice dated 13.09.2022 issued by the Joint Secretary-cum-Director, Prison and Reform Services Directorate, Bihar through which an explanation has been sought from the petitioner as to why he be not paid anything except subsistence allowance for the period of suspension as well as the order dated 20.12.2022 passed by the Joint Secretary-cum-Director, whereby it has been directed that during the period of suspension the petitioner will be paid nothing except subsistence allowance.

2. The brief facts of this case are that while the petitioner was posted as Jail Superintendent at Hajipur Jail on 03.01.2020, in the afternoon, one prisoner namely, Manish Kumar @ Netaji @ Telia was shot dead inside the jail by another prisoner namely, Raja Babu. Upon enquiry, it came to light that one Jail Staff namely, Raj Kumar, who was posted as Warder in the Hajipur Jail, in conspiracy with prisoner - Raja Babu, had supplied the firearm which was used in the incident. Immediately, after the incident, a search was conducted by the



District Magistrate, Vaishali and the Superintendent of Police, Vaishali during which a recovery/confiscation of 1 pistol, 2 live cartridges, 4 empty cartridges, 6 mobile phones, 2 chargers, 2 small steel scissors, 1 clay pipe (*chilam*), 2 iron chisels and other prohibited articles was made inside the jail premises. Thereafter, a joint report dated 04.01.2020 was prepared by the District Magistrate, Vaishali and the Superintendent of Police, Vaishali regarding the incident dated 03.01.2020 of shooting of prisoner was submitted to the Additional Chief Secretary, Home Department, Bihar, Patna vide letter dated 05.01.2020 and a copy of the same was also sent to the I.G., Prison, Bihar, Patna. Again, on 05.01.2020, in light of the direction given by the Additional Chief Secretary, Home Department, Bihar, a surprise inspection of District Jail, Hajipur was conducted by a team headed by the District Magistrate, Vaishali and the Superintendent of Police, Vaishali. During the surprise inspection, 3 mobile phones, 1 earphone, 1 USB and other restricted materials were recovered and the petitioner was found guilty for recovery of objectionable/prohibited items inside the jail premises and the inspecting team also found multiple loopholes/lapses in the infrastructure and security of the jail. On the basis of the aforesaid inspection report, the petitioner was



suspended in contemplation of disciplinary proceeding *vide* order dated 14.01.2020 and show cause notice was issued to the petitioner on 18.04.2020, which was responded to by the petitioner on 22.06.2020. Finding the response of the petitioner to be unsatisfactory, the respondents *vide* resolution dated 11.09.2020, initiated a departmental proceeding against the petitioner under the provisions of Bihar C.C.A. Rules, 2005 and issued the memo of charge against the petitioner.

3. The charges levelled against the petitioner were as under:-

(2) द्वितीय भाग – अवचार या कदाचार के लांछनों का सार

1. दिनांक 03.01.2020 को मंडल कारा, हाजीपुर में एक विचाराधीन बंदी मनीष कुमार उर्फ नेताजी उर्फ तेलिया पे० अमरेन्द्र कुमार सिंह को कारा के अंदर एक अन्य संसीमित बंदी राजा बाबू द्वारा गोली मारकर हत्या कर दी गयी। उक्त घटना के तुरंत बाद जिला पदाधिकारी, वैशाली एवं पुलिस अधीक्षक, वैशाली द्वारा मंडल कारा, हाजीपुर में की गई औचक तलाशी में वार्ड संख्या-6 के दक्षिण-पश्चिम कोना पर शौचालय के दक्षिण दीवार के पास केला के गाछी में छुपाकर रखा हुआ 01 पिस्टल, 02 जिन्दा कारतूस, 04 कारतूस का खोखा, 06 मोबाईल फोन, 02 चार्जर 02 स्टील की छोटी कैंची, मिट्टी का 01 चिलम, आईडिया का 02 सिम, लोहे की 02 छेनी आदि प्रतिबंधित सामाग्रीयां बरामद की गयी।

कारा में पिस्टल जैसी निषिद्ध सामग्री के प्रवेश से स्पष्ट है कि कारा के सुरक्षा कर्मियों की तलाशी कराने की व्यवस्था का अनुश्रवण एवं पर्यवेक्षण काराधीक्षक श्री रमेश प्रसाद द्वारा नहीं किया जा रहा था। यह बिहार कारा हस्तक-2012 के नियम-796 (i) (ii) का उल्लंघन है।

2. कारा में दिनांक 03.01.2020 को बंदी की हत्या की घटना की जांच के लिए गठित द्विसदस्यीय जांच दल के सदस्य सहायक कारा महानिरीक्षक (क्षेत्र) एवं सहायक कारा महानिरीक्षक (मु) द्वारा जांच के क्रम में पाया गया कि घटना के दिन के सीसीटीवी फुटेज में सभी बंदी जहां-तहां उक्त परिसर में घुमते दिख रहे थे। नीचे सुरक्षा कर्मी द्वारा बंदियों को उनके वार्ड/इन्क्लोजर में संसीमित नहीं किया जा रहा था।

इस प्रकार स्पष्ट है कि श्री प्रसाद का अपने अधीनस्थों पर कोई नियंत्रण नहीं था। यह उनकी घोर लापरवाही एवं बिहार कारा



हस्तक, 2012 के नियम-796 (ii) एवं 797 (v) के उल्लंघन का द्योतक है।

3. द्विसदस्यीय जांच दल के जांच के क्रम में पाया गया कि विचाराधीन बंदी राजा बाबु जिसके द्वारा बंदी मनीष की हत्या की गयी, उसका उपस्थापन अन्य तीन सह अभियुक्तों (रविशंकर कुमार उर्फ रवि मिश्रा, कुन्दन कुमार, धनन्जय कुमार उर्फ बादल) के साथ गेरोल थाना कांड संख्या-397/19 G.R.5957/19 में दिनांक 03.01.2020 को निर्धारित था, किन्तु उसे न्यायालय में उपस्थापित नहीं किया गया।

यह श्री रमेश प्रसाद, काराधीक्षक की कर्तव्य के प्रति लापरवाही एवं अधीनस्थों पर नियंत्रण के अभाव को दर्शाता है। यह बिहार कारा हस्तक, 2012 के नियम-796 (ii) के प्रावधान का उल्लंघन है।

4. पुनः दिनांक 05.01.2020 को जिला पदाधिकारी, वैशाली एवं पुलिस अधीक्षक, वैशाली द्वारा कारा के औचक निरीक्षण में सैम्संग कम्पनी का गोल्डन कलर का बिना सिम का 01 मोबाईल, सैम्संग कम्पनी का नेवी ब्लू कलर का 01 मोबाईल, Kekai Company का बिना सिम का नेवी ब्लू कलर का 01 मोबाईल, सफेद रंग का 01 इयरफोन, सफेद रंग का USB का 01 छोटा तार, टिफिनकैरियर के पत्तर की बनी हुई 01 चाकुनुमा छोटी डंडी, 01 मोबाईल चार्जर, 02 मोबाईल की बैट्री, खैनी का 01 पुड़िया, 01 शेविंग रेजर, 02 माचिस, 04 कार्ड रीडर, 18 पीस छड का छोटा टुकड़ा, 01 हसुआ, 01 खुरपी, गांजा जैसे पदार्थ की 01 पुड़िया एवं 6385.00 रुपये नगद बरामद किये गये।

कारा के अन्दर मोबाईल, नगद राशि एवं भारी संख्या में आपत्तिजनक/प्रतिबंधित सामग्रियों की बरामदगी से स्पष्ट है कि कारा के सुरक्षा मानकों का अनुपालन नहीं किया जा रहा है। यह श्री रमेश प्रसाद, काराधीक्षक की कर्तव्यहीनता, पदीय दायित्व के प्रति घोर लापरवाही एवं अपने अधीनस्थ कर्मियों पर नियंत्रण के अभाव का द्योतक है। यह बिहार-कारा हस्तक 2012 के नियम-140, 796 (i), (ii), 870 (iii) के विहित प्रावधान के विपरीत है।

5. कारा में मात्र दो दिन के अंतराल पर की गई छापेमारी में मोबाईल एवं भारी मात्रा में प्रतिबंधित सामग्रियों की बरामदगी से स्पष्ट होता है कि काराधीक्षक, श्री रमेश कुमार का कारा कर्मियों पर कोई नियंत्रण नहीं था एवं कारा में भारी मात्रा में प्रतिबंधित सामग्रियों के प्रवेश को रोक पाने में वे पूर्णतः असक्षम थे। इसी का परिणाम है कि दिनांक 03.01.2020 को कारा में अवैध रूप से प्रवेश पाये आग्नेयास्त्र का उपयोग कर एक बंदी द्वारा दूसरे विचाराधीन बंदी मनीष कुमार उर्फ नेताजी उर्फ तेलिया की गोली मारकर हत्या कर दी गयी।

उपरोक्त से स्पष्ट है कि श्री प्रसाद द्वारा अपने पदीय दायित्वों के सम्यक् निर्वहन में गम्भीर लापरवाही बरती गई है जिस कारण कारा जैसे अति सुरक्षित क्षेत्र में बंदी हत्या जैसी घटना घटित हुई तथा जिला प्रशासन की लगातार दो तिथियों पर की गई छापेमारी में कारा में भारी मात्रा में प्रतिबंधित सामग्रियों की बरामदगी हुई है। श्री प्रसाद द्वारा बिहार-कारा हस्तक 2012 के नियम-140, 796 (i), (ii), 797 (v) एवं 870 (iii) का स्पष्ट रूप से उल्लंघन करते हुए कर्तव्य के प्रति गंभीर लापरवाही बरती गई है। यह बिहार सरकारी सेवक आचार नियमावली,



1976 के नियम-3 (1), (2) का भी उल्लंघन है।”

4. After enquiry, the Enquiry Officer submitted his report vide letter dated 22.11.2021 finding the charge no.1 to be proved and rest four charges to be partially proved. Thereafter, the second show-cause notice was issued to the petitioner along with the enquiry report. Responding to the same, the petitioner filed his reply to the second show-cause notice. Being dissatisfied with the reply of the petitioner, the disciplinary authority imposed the punishment of withholding of five increment with cumulative effect. Against the order of the punishment, the petitioner filed a review, which was dismissed vide order dated 01.09.2022. Thereafter, a show-cause notice dated 13.09.2022 was issued to the petitioner asking him an explanation as to why he be not paid anything except subsistence allowance for the period of suspension. Responding to the same, the petitioner filed his reply to the said show-cause notice. By the order dated 20.12.2022 issued by the Joint Secretary-cum- Director, it was directed that during the period of suspension the petitioner would be paid nothing save and except the subsistence allowance.

5. At the outset, the learned counsel for the petitioner submits that since the charges against the petitioner



revolves around the alleged non-monitoring of frisking of jail staffs, no control over subordinates, lack of supervision upon subordinates, dereliction of duty and incompetence, therefore it is submitted that the petitioner is a diligent government servant and his exceptional work is recognized even to the extent that the petitioner is a recipients of the President's Correctional Service Medal. Adverting to several annexures, the learned counsel for the petitioner has next submitted that the petitioner has taken several steps to ensure that the security and order is maintained inside the jail premises, including the raising of boundary wall height, installation of jammers and CCTV cameras. Further, the petitioner has regularly given specific directions to his subordinate officers and staffs to ensure proper security in the jail premises and ensure strict adherence to the Prison Manual. Specifically adverting to one letter dated 19.06.2019, the learned counsel submits that the petitioner never hesitated to perform his duties and, in fact, when at one instance the petitioner came to know about a jail staff who was not working satisfactorily, the petitioner had promptly written to the Inspector General to depute other personnel. Therefore, it is the categorical submission of the learned counsel for the petitioner that the petitioner took every possible steps in order to ensure



that the security inside the jail premises is maintained. However, incident leading to the death of one of the prisoner was a result of a concerted conspiracy which was hatched by one of the jail staffs for which the petitioner cannot be fastened with any direct liability.

6. The learned counsel for the petitioner next submits that the thrust of the allegation against the petitioner is that of dereliction of duty and lapses in maintaining the security in the jail premises, however, the petitioner after availing a long leave of three months, had just joined a day prior i.e. on 02.01.2020 and the unfortunate incident of shooting took place on 03.01.2020 in the afternoon and therefore, the lapses and the systemic issue of the jail cannot be fastened with the petitioner. He further submits that in the year 2018 the jail premises was inspected by the then District Magistrate, Vaishali and during the inspection certain irregularities and deficiencies were found in the infrastructure of the jail premises including the short height of the boundary wall of the jail and thereafter, the District Magistrate had issued certain directions and in pursuance of the said directions, the petitioner time and again has been writing letters to the Executive Engineer, Building Construction Department and I.G. Prisons, Bihar to improve the infrastructure



and security at Hajipur Jail especially with regard to increasing the height of perimeter/boundary wall as the Hajipur jail which is surrounded on three sides by busy road and due to short height of the boundary wall, prohibited items were constantly thrown inside the jail premises. The petitioner had also requisitioned for installing a jammer and more CCTV cameras around the jail premises but no action was taken.

7. Learned counsel for the petitioner further submits that the petitioner has also been writing letters to his subordinates including Assistant Superintendent and in charge of BMP and other jail staffs reminding them to ensure proper frisking of personnel who enter the jail premises and even further direction was issued to take appropriate action in case of recovery of objectionable items inside the jail. However, despite proper monitoring and supervision by the petitioner, one of the jail staffs namely, Raj Kumar in conspiracy with one inmate namely Raja Babu delivered the firearm inside the jail because of which, the incident leading to the death of a prisoner took place on 03.01.2020.

8. It has also been submitted that on perusal of memo of charge, it transpires that the charges were sought to be proved through two oral witnesses who were examined jointly



by the Enquiry Officer on the basis of a questionnaire handed over to them and it is apparent that they have said nothing against the petitioner. Further, the Enquiry Officer found charge no. 1 to be proved and charge nos. 2, 3, 4 & 5 to be partially proved based on no cogent evidence because the contents of the joint report were not proved by the authors of the report namely the then Superintendent of Police, Vaishali and the then District Magistrate, Vaishali.

9. It has categorically been submitted by learned counsel for the petitioner that the Enquiry Officer has placed heavy reliance on the statement of Raj Kumar (warder of the jail), who supplied the firearm to prisoner Raja Babu, but aforesaid Raj Kumar was not produced as a witness in the departmental proceeding and the petitioner was not given any opportunity to cross examine him. Therefore, the reliance of enquiry officer on the statement of Raj Kumar to bring home charge no.1 is unsustainable in the eye of law. In support of this submission, learned counsel for the petitioner has placed reliance on a judgment of the Hon'ble Supreme Court in the case of *Roop Singh Negi vs. Punjab National Bank* reported as *2009 (2) SCC 570*.

10. The learned counsel for the petitioner has



emphatically submitted that in the present case, the Enquiry Officer has examined two witnesses jointly on the basis of questionnaire, which is bad in law because it is the representative of the department i.e. the Presenting Office who is supposed to lead evidence on behalf of the department to bring home the charges. The petitioner was also not given any opportunity to cross examine the two witnesses. In support of this submission, the learned counsel has relied on a judgment of the Hon'ble Supreme Court in the case of ***State of U.P. vs. Saroj Kumar Sinha*** reported as ***(2010) 2 SCC 772***

11. It has categorically been submitted by the learned counsel for the petitioner that the departmental proceeding comes to an end after the impugned punishment order has been passed and the disciplinary authority becomes *functus officio* and thus ceases to have any jurisdiction to exercise power under Rule 11(5) of the Bihar CCA Rules but, in the instant case, even after the conclusion of the departmental proceeding the respondents proceeded in the matter and another show cause notice dated 12.09.2022 was issued through which an explanation was sought from the petitioner on the issue as to why he be not paid anything except the subsistence allowance for the period of suspension and subsequently another order



dated 20.12.2022 was passed directing that during the period of suspension the petitioner would be paid nothing except the subsistence allowance. In support of the above stated facts, the learned counsel for the petitioner has placed reliance on a judgment of Hon'ble Supreme Court in the case of *SBI v. S.N. Goyal* reported as *(2008) 8 SCC 92*.

12. Lastly, the learned counsel for the petitioner submits that the power and duties of Jail Superintendent is defined in Rule 796 and 797 of the Bihar Prison Manual, 2012, which provides that the Superintendent of Jail is the overall in-charge of the administration of the prison and is supposed to monitor and supervise the overall functioning of the jail and as per Rule 800 of the said Manual, it is Deputy Superintendent (Adm. & Security) who is mainly and specifically responsible for search and seizure at the main gate and further he has to ensure that no prohibited/banned items are admitted inside the prison and no such items or activity as may endanger the security of the prison be allowed inside the prison. Therefore, the petitioner is being unnecessarily dragged in the departmental proceeding on vague and non-specific charges.

13. The respondent authorities have filed two counter affidavits in the matter, in which they have reiterated the



facts of the case and have vehemently submitted that the impugned orders have been passed by the respondent authorities only after following the proper procedure prescribed by law. It has been stated in the counter affidavits that on two occasions the search was conducted in the jail premises and several restricted/prohibited articles have been recovered inside the jail premises and it was also found that there was no arrangement for intensive searching at the gate of the prison and the system of searching the jail security personnel was not being monitored and supervised by the petitioner. It has also been stated in the counter affidavits that the recovery of huge amount of objectionable / prohibited articles including the firearms and live cartridges inside the jail premises is itself indicative of gross negligence, dereliction of duty and lack of control of the petitioner over his subordinates.

14. I have considered the submissions of the parties and perused the materials on record.

15. From the perusal of the records of the case, it appears that on 03.01.2020 one of the prisoners at Hajipur Jail had shot another prisoner leading to the death of the other prisoner. Immediately thereafter, a search was conducted wherein multiple prohibited articles were seized inside the jail



premises and an enquiry was conducted on 03.01.2020 itself wherein *prima facie* five personnel were found liable for the lapses in the jail security leading to the aforesaid death of one of the prisoners, however, the present petitioner was neither named nor any adverse remark was made against him. Subsequently, another Two-Men committee conducted the inspection of the jail premises, in which the petitioner was found guilty for recovery of objectionable / prohibited items from the jail premises. On the basis of the aforesaid inspection report, the petitioner was suspended in contemplation of disciplinary proceeding and show cause notice was issued to the petitioner, which was responded to by the petitioner. Thereafter, the respondents *vide* resolution dated 11.09.2020, initiated a departmental proceeding against the petitioner under the provisions of Bihar CCA Rules, 2005 and issued the memo of charge against the petitioner.

16. The Enquiry Officer, has found charge no.1 to be proved and rest charges to be partially proved. From the enquiry report, it appears that the Enquiry Officer has found the charge no.1 to have been proved against the petitioner, however, he has failed to consider the statements of the witnesses produced on behalf of the petitioner in his defence. Though



heavy reliance has been placed by the Enquiry Officer on the joint enquiry report but the said joint report was not proved by its authors. Further, the Enquiry Officer has again placed heavy reliance on the statement of Raj Kumar, jail staff, who is alleged to have supplied the firearm to the prisoner, but he was not produced as a witness in the departmental proceeding.

17. Recently, the Hon'ble Supreme Court in the case of *Satyendra Singh vs. State of U.P.*, reported as **2024 SCC OnLine SC 3325**, relying upon the earlier precedents in the case of *Roop Singh Negi (supra)* and *Nirmala J. Jhala vs. State of Gujarat & Anr.* reported as **(2013) 4 SCC 301** has held as under:-

“13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570 and Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301.

14. *In the case of Roop Singh Negi, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:-*

“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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he



had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713: 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. **This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record.** ...”(emphasis supplied)

15. Same view was reiterated in State of Uttar



Pradesh v. Saroj Kumar Sinha (2010) 2 SCC 772 wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in *Saroj Kumar Sinha* are as follows:—

“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.

....

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been



condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.” (emphasis supplied)

16. *In the case of **Nirmala J. Jhala**, this Court held that evidence recorded in a preliminary inquiry cannot be used for a regular inquiry as the delinquent is not associated with it and the opportunity to cross-examine persons examined in preliminary inquiry is not given.*

Relevant extract thereof reads as under:—

*“42. A Constitution Bench of this Court in **Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992]**, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in*



preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held *ex parte*, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under :
(AIR p. 1862, para 12)

“12.... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the



three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [not prior to that].”

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra [(1997) 1 SCC 299]*, this Court dealt with the issue and held as under:

“...a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

45. *In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.*



(emphasis supplied)

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.

18. As a consequence, thereof, the High Court fell into grave error of law while interfering in the well-reasoned judgment rendered by the Tribunal whereby, the Tribunal had quashed the order imposing penalty upon the appellant.”

(Emphasis Supplied)

18. More recently, the Hon'ble Supreme Court in the case of ***K. Prabhakar Hegde vs. Bank of Baroda*** reported as ***Neutral Citation 2025 INSC 997*** has considered the multiple precedents and has summarized the position of law as under:-

“25. The upshot of the aforesaid decisions is that:

- i. A preliminary inquiry is conducted for the purposes of determining whether regular disciplinary proceedings are called for or not;
- ii. A preliminary inquiry report is an internal



document;

- iii. *A preliminary inquiry report or the findings therein cannot be used to come to conclusions recorded in the report of inquiry if such preliminary inquiry report/findings are based on oral and/or documentary evidence which are obtained behind the back of the charged employee and such oral/documentary evidence are not presented in the inquiry in the presence of such employee;*
- iv. *If a preliminary inquiry report or the findings therein are sought to be relied on, the witnesses whose evidence was relied on in preparing the same ought to be brought before the inquiry officer and the charged officer afforded an opportunity to cross-examine them;*
- v. *If a preliminary inquiry report is sought to be relied upon in the inquiry report, then such preliminary inquiry report must be provided to the delinquent employee;*
- vi. *Once a chargesheet is drawn up and has been provided to the charged officer detailing the charges, the preliminary inquiry report is of no consequence and need not be provided to him.”*

19. Applying the law laid down in the afore-quoted decisions and the facts of the present case, it is clear that the petitioner was prevented from cross-examining the crucial



witness i.e. Raj Kumar, who was the staff of the Jail and had allegedly admitted of supplying the firearm inside the jail premises since, he was not produced as a witness in the disciplinary proceeding. Further, though in the departmental proceeding the petitioner had relied on the relevant Rules under the Bihar Prison Manual, 2012, to contend that it was the categorical responsibility of the Deputy Superintendent (Administration and Security) to ensure safety and security in the jail premises and the present petitioner being the Superintendent was in-charge of overall matters relating to the security but, the aforesaid contention of the petitioner has not been dealt with in the impugned enquiry report and further the Deputy Superintendent (Administration & Security) was also never examined as a witness in the departmental enquiry.

20. Moreover, it is abundantly clear that the disciplinary proceedings has been proceeded without meeting the threshold of the departmental proceeding before arriving to a finding of guilt since the preliminary inquiry report and the statement of the jail staff, who admittedly supplied the firearm inside the jail, has been used to come to a conclusion of guilty of the petitioner without producing or proving such oral/documentary evidence independently before the Enquiry



Officer, inasmuch as, merely by enclosing documents with the memo of charge would not become a piece of evidence. Though the strict rules of evidence does not apply in a case of disciplinary proceeding but the principles of natural justice would require that the authors of such documents would present themselves before the Enquiry Officer to prove the contents thereof and withstand the test of cross-examination by the delinquent. It is settled that the threshold required in a disciplinary proceeding is definitely not that of 'beyond all reasonable doubt', however, even in a disciplinary proceeding the finding of guilt must be based on cogent and relevant materials which are proved on the threshold of preponderance of possibilities.

21. This Court has also noted the fact the petitioner after availing a long leave of three months, had just joined a day prior to the incident of shooting which took place on 03.01.2020. Therefore, on this count also, the lapses and the systemic issue of the jail cannot be strictly fastened with the petitioner particularly in absence of any specific allegation of wrong doing or incompetence.

22. Considering the aforesaid facts and also the law laid down by the Hon'ble Supreme Court in the above-



quoted decisions, the enquiry report and all subsequent orders stand vitiated.

23. Accordingly, the impugned order of punishment dated 25.05.2022 and the revisional order dated 01.09.2022 are quashed and set aside. Consequently, the order dated 20.12.2022, by which the petitioner has been denied the full salary during the suspension period, is also quashed and set aside. The petitioner shall be entitled to all consequential benefits in accordance with law.

24. With the aforesaid observations and directions, this writ petition is allowed.

(Sandeep Kumar, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	14.10.2025
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