

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.25072 of 2013**

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Ramesh Mishra, Son of Sri Chandra Kishore Mishra, Resident of Village Sukhsena, P.S. Barhara Kothi, District Purnea presently posted as the Additional Collector, Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna.
5. The Commissioner, Purnea Division, Purnea.
6. The District Magistrate, Kishanganj.

... .. Respondent/s

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**Appearance :**

For the Petitioner	:	Mr. Bindhyachal Singh, Senior Advocate Mr. Aakash Kumar, Advocate
For the State	:	Mr. Prabhakar Jha, G.P.27 Mr. Shankar Kr. Thakur, Advocate Mr. Mukund Mohan Jha, A.C. to G.P.27

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**CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR**  
**ORAL JUDGMENT**

**Date : 27-04-2026**

Heard the learned counsel for the parties.

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

“i. For issuance of writ in the nature of certiorari for quashing of Letter No. 16640 dated 22.10.2013 issued by the Joint Secretary, General Administration Department, Govt. of Bihar, Patna whereby the petitioner has been served with a second show cause notice for grant of major punishment under Rule 14 of the Bihar Government Servant (Classification, Control & Appeal) Rules,



2005.

ii. For issuance of writ in the nature of certiorari for quashing of the inquiry report dated 6.03.2010 submitted by the Conducting Officer-cum-Commissioner, Purnea Division, Purnea whereby the charges have been proved against the petitioner in gross violation of the principle of natural justice and without supplying the requisite documents to the petitioner which caused great prejudice to the defense of the petitioner in the departmental proceeding.

iii. For holding that the Inquiry Officer was wrong in submitting his inquiry report without ensuring compliance of his own order whereby he had directed the Presenting Officer to provide the required documents to the petitioner.

iv. For holding that the Respondent Authorities were wrong in issuing second show cause notice to the petitioner on the basis of faulty inquiry report which has been conducted in total violation of the principle of natural justice.

v. For restraining the respondents from taking any action against the petitioner till the enquiry report is conducted in a proper manner in consonance with the principle of natural justice.”

3. Vide order dated 05.12.2014, passed by a learned Co-ordinate Bench of this Court, the prayers made in I.A. No.5549 of 2014 were treated to be part and parcel of the writ petition and the same are being reproduced hereinbelow:

“(i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the resolution dated 14.07.2014 contained in memo no. 9554 issued under the signature of the



Joint Secretary, General Administration Department, Bihar, Patna, whereby the petitioner has been subjected to punishment of compulsory retirement under rule 14 (ix) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondent authorities to reinstate the petitioner with all consequential benefit including payment of the salary.

(iii) For issuance of writ in the nature of mandamus or any other appropriate writ for staying the aforesaid resolution dated 14.07.2014 contained in memo no. 9554 issued under the signature of the Joint Secretary, General Administration Department, Bihar Patna during pendency of the writ petition.”

### **FACTS**

4. The brief facts, giving rise to the present writ petition, are that the State Government formulated the Industrial Promotion Policy, 1995 and for making the objects of this policy successful, the Revenue and Land Reforms Department, Government of Bihar, Patna vide its Letter No.1697, dated 22.11.1995 authorized the District Magistrates of all the districts in the State of Bihar to allot up to 5 acres of land for establishing the industrial units. On the basis of the said circular of the State Government, 44 persons were settled with 182.07 acres of government land, for the purposes of tea plantation in the district of Kishanganj. Later on, a decision was taken by the



government that the lands were wrongly given on lease for 90 years, therefore, the lease is to be cancelled and vide Letter No.6, dated 07.01.2002, the State Government directed the District Magistrate, Kishanganj to cancel the land and to take the land in question, in possession. The petitioner was working as a Land Reforms Deputy Collector (hereinafter referred to as 'L.R.D.C.') in the district of Kishanganj at the relevant time. A decision was taken at the level of the government to initiate departmental proceeding against all the Additional Collectors, Sub-divisional Officer, L.R.D.Cs. and Circle Officers, who were posted during the relevant time in the district of Kishanganj. Vide Letter No.63, dated 05.01.2006, issued under the signature of the Commissioner, Purnea Division, Purnea, a list of 10 officials, including the petitioner, was sent to the Commissioner and Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna. Accordingly, vide Letter No.218(6), dated 11.02.2006, a decision was taken for initiation of departmental proceeding against the ten named officials in letter dated 05.01.2006, including the petitioner herein. Memo of charge was issued to the petitioner whereby certain charges were levelled against the petitioner and an explanation was asked for by the Personnel and Administrative Reforms



Department. The petitioner duly submitted his reply to the show-cause notice issued to him on 11.08.2006, wherein he clarified that he merely forwarded the records, which were submitted before the petitioner by the Circle Officer, Pothia and Thakurganj and while forwarding the said records, nothing was suppressed by the petitioner or no wrong report was sent. Ignoring the reply filed by the petitioner, a departmental proceeding was initiated against him and vide Memo No.10670, dated 29.10.2009, issued under the signature of the Under Secretary to the Government, Personnel and Administrative Reforms Department, Government of Bihar, Patna, the Commissioner, Purnea Division, Purnea was appointed as the Conducting Officer and in the said memo, it was specifically mentioned that on the proposal to initiate departmental proceeding, the approval of the Hon'ble Chief Minister has been obtained. Further, vide Memo No.906, dated 25.11.2009, issued under the signature of the District Magistrate, Kishanganj, the Additional Collector, Kishanganj was appointed as the Presenting Officer. The date was fixed by the Conducting Officer, wherein the petitioner appeared and asked for certain documents, on the basis of which, the departmental proceeding was initiated and were referred to in the list of enclosure, with



the memo of charge. The Conducting Officer, vide order dated 27.11.2009, directed the Presenting Officer to make available the records and fix next date in the departmental proceeding as 16.12.2009. When the records were not produced on the next date, the matter was adjourned and finally the date of 13.02.2010 was fixed. On the said date, the petitioner is said to have appeared but the Presenting Officer was not present, however the Conducting Officer, in his absence directed the Presenting Officer to produce any evidence in support of the charge and thereafter no date was fixed, as per the averments made by the petitioner. All of a sudden, the petitioner came to know that the Enquiry Officer submitted his report on 06.03.2010, but the said documents, which were asked for by the petitioner, were never provided to him or no opportunity was given to the petitioner to verify the same. Subsequently, vide Letter No.16640, dated 22.10.2013, issued under the signature of the Joint Secretary to the Government, General Administration Department, Government of Bihar, Patna along with the second show-cause notice, the copy of the enquiry report dated 06.03.2010 was also provided to the petitioner and on perusal thereof, the petitioner came to know that the enquiry officer found all the five charges levelled against the petitioner



to be proved. The petitioner submitted his reply to the second show-cause notice on 06.11.2013, wherein he denied the charges levelled against him and stated therein that despite direction of the Conducting Officer, the documents were never provided to the petitioner and further requested for providing the written submission filed by the Presenting Officer, along with the documents so that he can file his detailed show-cause reply. The Disciplinary Authority by the impugned order contained in Memo No.9554, dated 14.07.2014, proceeded to pass the order of punishment against the petitioner, whereby the petitioner was compulsorily retired from service.

#### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

5. The learned Senior Counsel for the petitioner submits that the entire proceeding was conducted in complete violation of the provisions contained in Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar C.C.A. Rules, 2005'), inasmuch as that along with the memo of charge, the list of witnesses was not provided to the petitioner and even the documents, which were intended to be relied during the departmental enquiry, were not provided to the petitioner. He further submits that the date was fixed by the Conducting



Officer in the departmental proceeding and on the request made by the petitioner, the Conducting Officer directed the Presenting Officer to make available the records/documents asked for by the petitioner on 27.11.2009, but despite the direction made by the Conducting Officer, the documents were never supplied/provided to the petitioner. It is further submitted that on the date fixed, i.e., 13.02.2010, the Presenting Officer did not appear and the matter was adjourned and thereafter no date was fixed in the proceeding, however the Presenting Officer submitted his written submissions along with the documents, which were never provided to the petitioner, even along with the enquiry report. The Conducting Officer without adducing any evidence or giving opportunity to the petitioner to produce defence witnesses in his favour, to rebut the charges levelled against him, only on the basis of the documents, which were not proved by their respective authors, proceeded to hold that the charges levelled against the petitioner have been found to be proved. The learned Senior Counsel for the petitioner submits that since the documents/records were never provided to the petitioner, it caused great prejudice to the case of the petitioner, since in absence thereof, he was denied the opportunity to contradict the documents and even he was denied the



opportunity to cross-examine the witnesses, since no witness was examined during course of enquiry. He further submits that the documents/records, which were the basis for issuance of memo of charge against the petitioner, were not provided, that amounts to violation of the principles of natural justice, as the petitioner could not defend himself in the departmental proceeding, in absence of the evidence adduced against the petitioner. He further submits that even the Conducting Officer did not take any pain to see that whether the documents, which he had directed the Presenting Officer to provide to the petitioner, were provided to the petitioner or not and he went ahead with the enquiry and submitted the enquiry report behind the back of the petitioner. He submits that issuance of second show-cause notice to the petitioner, on the basis of the faulty enquiry report, is totally arbitrary and illegal and amounts to punishing the petitioner, without giving him any opportunity. The learned Senior Counsel for the petitioner further submits that the charge memo itself is fit to be set aside, since it has been issued by the incompetent authority, inasmuch as the same has not been issued by the appointing authority of the petitioner. He further submits that the Enquiry Officer, in his enquiry report travelled beyond the charges which were levelled against the



petitioner and further submits that identically situated persons, i.e., the persons against whom recommendation was made vide letter dated 05.01.2006 for initiation of departmental proceeding, have been granted relief by this Court.

6. The learned Senior Counsel for the petitioner refers to and relies upon a judgment of the Hon'ble Supreme Court of India, reported in **(2014) 1 SCC 351 (Union of India v. B.V. Gopinath)**, wherein in paragraph nos.43, 44, 45, 47, 48, 49, 50, 53 and 55 has held as follows:

“43. Clause (8) of the circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain reading of the aforesaid clause shows that it relates to a decision to be taken by the disciplinary authority as to whether the departmental proceedings are to be initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order. We do not agree with Ms Indira Jaising, learned Additional Solicitor General that the use of the words “*approval of*” is not an expression distinct from “*approval for*” initiating major penalty proceedings.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking “approval for issuing charge memo/sanction of prosecution”. The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be



initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (*initiation*), only then the question of approval of charge memo arises. The departmental would thereafter complete the necessary formalities and then place the file before the Finance Minister, for “*approval of*” charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in Clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to



be consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.

47. This principle has been given recognition in *Sahni Silk Mills (P) Ltd.* wherein it was held as under: (SCC p. 350, para 6)

“6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee (sic) I to exercise the power. The real problem or the controversy arises when there is a subdelegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place.”

48. Much was sought to be made by Ms Indira Jaising on Clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by CVO. According to the learned Additional Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of



charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a satisfaction memo prepared by CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of he alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo.

49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12)reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DoP&T, issuance of show-cause notice in case of disagreement with the enquiry officer's



report, tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/memorial have to be taken by the Finance Minister.

50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax(Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and *for initiation* of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.

53. Further, it appears that during the pendency of these proceedings, the appellants have, after 2009, amended the procedure which provides that the charge memo shall be issued only after the approval is granted by the Finance Minister.

55. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law.”



7. The learned Senior Counsel for the petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India, reported in **(2021) 20 SCC 12 (Sunny Abraham v. Union of India)**, wherein in paragraph no.15, the Hon'ble Supreme Court of India has held as follows:

“15. The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis the case of *B.V. Gopinath*. In the latter authority, the charge memorandum without approval of the disciplinary authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the disciplinary authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the disciplinary authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the



two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the disciplinary authority at both stages – for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the disciplinary authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the disciplinary authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in the case of *B.V. Gopinath*, as would be evident from para 8 of the report which we reproduce below: (SCC p. 358)

“8. Ms Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings. According to the learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance



Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT as well as the High Court had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy.”

8. The learned Senior Counsel for the petitioner further refers to and relies on a judgment of the Hon’ble Supreme Court of India in the case of **Roop Singh Negi v. Punjab National Bank**, reported in **(2009) 2 SCC 570**, wherein in paragraph no.14 and 23, 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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

9. The learned Senior Counsel also refers to and relies on a judgment of the Hon’ble Supreme Court of India, reported in **(2013) 12 SCC 372 (Lucknow Kshetriya Gramin Bank v. Rajendra Singh)**, wherein in paragraph nos.15 to 20,



the Hon'ble Supreme Court of India has held as follows:

“15. As is clear from the above that the Judicial review of the quantum of punishment is available with a very limited scope. It is only when the penalty imposed appears to be shocking disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment.

16. In the present case, however, we find that the High Court has, on the one hand directed the appellate authority to take a decision and in the same breath, snatched the discretion by directing the appellate authority to pass a particular order of punishment. In normal course, such an order would clearly be unsustainable, having regard to the legal position outlined above. The peculiar feature, however, is that the High Court has done so proceeding on the presumption that these three respondents are equally and identically placed as the other three employees who had admitted the charges, though this parity is not spelled out in the impugned order. Whether this approach of the High Court is tenable, looking into the facts of this case, is the moot question.

17. If there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution of India. That is the ratio of *Rajendra Yadav case*, already



taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should be commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of *Obettee (P) Ltd. case* even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employee accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

18. This, according to us, would be the harmonious reading of *Obettee (P) Ltd.* and *Rajendra Yadav* cases.

19. The principles discussed above can be summed up and summarized as follows:

19.1 When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively



within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

20. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was co-delinquent. Such a comparison is not permissible by citing the cases of other employees, as



precedents, in altogether different departmental enquiries.”

10. Reliance has further been placed by the learned Senior Counsel for the petitioner on a judgment of the learned Co-ordinate Bench of this Court dated 25.07.2017, passed in **C.W.J.C. No.15658 of 2016 (Dr. Fateh Faiyaz vs. The State of Bihar & Ors.)**, wherein identically situated person was proceeded with vide letter dated 05.01.2006, whereby recommendation was made to initiate departmental proceeding against the petitioner of C.W.J.C. No.15658 of 2016. The learned Co-ordinate Bench of this Court by referring to different judicial pronouncements of the Hon’ble Supreme Court of India and considering the aspect with regard to selective imposition of punishment, came to the conclusion that the the proceedings in question is an extreme case of abuse of executive power by the State for neither on the procedure followed nor on merits of the charge, the allegations are sustainable and in the circumstances where the decision maker on the recommendation has been left scot free, the order of penalty impugned in the writ petition cannot be upheld and proceeded to allow the writ petition with all consequential benefits to the petitioner of C.W.J.C. No.15658 of 2016.

11. The said judgment dated 25.07.2017, passed in



C.W.J.C. No.15658 of 2016 was assailed by the State of Bihar by filing Letters Patent Appeal bearing L.P.A. No.1619 of 2017, however, the same was dismissed vide judgment dated 20.03.2018, passed by Hon'ble Division Bench of this Court.

12. The learned Senior Counsel for the petitioner further refers to and relies on an order passed by a learned Co-ordinate Bench of this Court on 20.11.2017 in **C.W.J.C. No.10098 of 2014 (Raghunandan Jha vs. The State of Bihar & Ors.)**, whereby the learned Co-ordinate Bench proceeded to quash the order of punishment on the basis of different orders passed by different Benches of this Hon'ble Court in favour of some of the persons, against whom recommendation was made for initiation of departmental proceeding vide letter dated 05.01.2006, with all consequential benefits. The said order dated 20.11.2017, passed in C.W.J.C. No.10098 of 2014, was subject matter of appeal by the State of Bihar bearing L.P.A. No.245 of 2018. The Hon'ble Division Bench of this Court vide order dated 22.01.2019 proceeded to reject the appeal filed by the State of Bihar.

**SUBMISSIONS ON BEHALF OF THE STATE**

13. *Per contra*, the learned counsel appearing on behalf of the State submits that the proceeding against the



petitioner was initiated after following all the due process of law and there was no infirmity in the entire departmental proceeding conducted against the petitioner, as no objection was raised by the petitioner during entire departmental proceeding with regard to any infirmity in conducting the departmental proceeding. The petitioner duly participated in the departmental proceeding and the Disciplinary Authority after considering the enquiry report, as well as the reply to the second show-cause notice submitted by the petitioner, proceeded to award punishment against the petitioner, whereby he has been compulsorily retired from service. The petitioner duly participated in the departmental proceeding, submitted his explanation, along with photo copies of the relevant documents as his evidence and it cannot be said that the proceeding was closed on 13.02.2010, since the Conducting Officer directed the Presenting Officer to come forward with cogent evidence against the petitioner within one week. The learned counsel for the State further submits that the petitioner has failed to demonstrate the prejudice caused to him on account of the alleged acts of omission and commission on the part of the Conducting Officer. He further submits that law in this regard is very much clear that the onus is on the delinquent to demonstrate as to how the delinquent was put to



substantial prejudice during a departmental proceeding, on account of non-supply of certain documents and as such, the petitioner having failed to make out a case in terms of above settled proposition of law, the writ petition is fit to be dismissed at the stage of admission itself.

14. The learned counsel for the State refers to and relies on a judgment of the learned Co-ordinate Bench of this Court, reported in **2013 (3) PLJR 775 (Om Prakash Sah vs. State of Bihar)**, wherein in paragraph nos.4 and 7 to 11, the learned Co-ordinate Bench has held as follows:

“4. In the considered opinion of this Court, when not a word has been said by the petitioner in the writ petition as with regard to any procedural error or infirmity in course of departmental proceeding this Court was not required to examine the oral submissions made by the learned counsel for the petitioner. The only two paragraphs which can remotely be taken to be the petitioner’s challenge to the enquiry are paragraph nos. 4 & 5 of the writ application, which reads as follows:-

“4 That it would be relevant to state here that even through the documents supporting charges were not furnished to the petitioner despite that he duly filed his reply for kind consideration.

5. That it would be relevant to state here that while conducting the said departmental proceeding no opportunity was granted to the petitioner to defend himself



and examine the complainant who not only falsely implicated the petitioner rather three other employee also namely Shri Dronacharya and Shri Jayant Singh and latter on refused to file any complain of such nature but incomplete ignorance of petitioners request in highly casual and cavalier manner the enquiry report stand submitted on 17.6.11 in complete non-appreciation of the relevant facts and procedure also.”

7. Moreover, from the reading of the defence of the petitioner as specifically noted in the enquiry report, it would appear that the petitioner did not question as with regard to the complaint filed by Yogendra Prasad in any manner and his defence was as alleged by Yogendra Prasad that he had not prepared the list of the Home Guard who were sent on training rather it was one Dronacharya who had prepared such list and he, in capacity of the In-charge of the Home Guard Cell, had merely signed on the concerned register. It has to be noted that the gist of the charge against the petitioner was that one Babli Singh, a Home Guard, was sent on training without filling the prescribed bond. This filling up of the bond before the concerned Home Guard was sent on training had to be examined by the petitioner in capacity of the In-charge of the section of the Home Guard and it was lapse on the part of his duty that a Home Guard was trained without filling up the bond leading to misuse of Government exchequer. This charge was found to be proved in the detailed analysis made by the enquiry officer in the enquiry report wherein it was held that the list, which was prepared for sending the Home guard on training,



was containing the signature of the petitioner and if the petitioner had verified the list containing forty names of the Home Guard, Babli Singh could not have been sent on training. Thus, from perusal of the enquiry report, it would be more than clear that the charges framed against the petitioner relating to his misconduct by way of being negligent towards his duty was found to have been proved.

8. It is very significant to mention here that the petitioner was, thereafter, given a copy of the enquiry report along with a show-cause notice as to why he should not be subjected to a major punishment under Rule 18. The petitioner in his reply dated 29.7.2011 had nowhere raised the question of non-examination of the complainant Yogendra Prasad or non-supply of the document or even the plea that he had signed the list on the instruction of his superior as has been now sought to be argued by the learned counsel for the petitioner while assailing the impugned orders. From reading of his second show-cause reply, all that it would transpire that the petitioner had tried to shift his blame on fellow colleague Dronacharya. In this regard, it would be relevant to quote the only explanation given by the petitioner to the findings recorded against him by the enquiry officer, which reads as follows:

“कृपया इस संबंध में वास्तविकता यह है कि उपरोक्त आवृत्तिचर्या में भेजे गये 40 गृह रक्षकों नामों का आगमन पंजी दिसम्बर 09 के प्रथम सप्ताह में अधिनायक अनुदेशक द्रोणाचार्य द्वारा होमगार्ड शाखा के मासिक भेजे जाने वाले मुख्यालय विवरणी संचिका के साथ उपस्थापित किये तथा बताया गया कि गृह रक्षकों को प्रशिक्षण में जाने वाले विवरणी/कर्त्तव्य आदि का है। जिसमें उक्त प्रशिक्षण में भेजे गये गृह रक्षकों का आगमन कराया गया था जिसे प्रशिक्षण विवरणी में दिखाया गया था। पंजी हस्ताक्षर हेतु समर्पित किया गया प्रार्थी उक्त शाखा के प्रभारी के नाते सहायक



दैनिक कार्य संपादन के अनुसार अपना हस्ताक्षर नवम्बर 09 में प्रशिक्षण में गये आगमन पंजी पर रेगुलर कार्य संपादन के क्रम में सहकर्मी के नाते किये। मैंने सहायक से हस्ताक्षर करने के पूर्व मौखिक रूप से पुछा भी था कि प्रशिक्षण में जाने वाले गृह रक्षकों का नॉमिनल रोल आदि अभिलेख से जांच आदि कर लिए हैं तो उसने बताया कि सभी जांच करने के बाद ही गृह रक्षकों को प्रशिक्षण में भेजा गया है। इस संदर्भ में तत्कालिक जिला समादेष्टा महोदय हस्ताक्षर किये है। यदि सहायक होमगार्ड शाखा अधिनायक अनुदेशक द्रोणाचार्य जो उक्त शाखा के पूर्ण प्रभार में है निर्धारित तिथि को प्रशिक्षण में जाने के दिन सूची उपस्थापित किया जाता तो निश्चित रूपसे प्रार्थी नौमिनल रोल से जांचोपरान्त सूची एवं कमान पत्र पर हस्ताक्षर कर नियमानुसार भेजने की कार्रवाई किया जाता। परन्तु अधिनायक अनुदेशक द्रोणाचार्य सहायक होमगार्ड शाखा प्रभारी द्वारा ससमय नहीं किया गया”

9. Thus, apart from the fact that the issues argued before this Court by the learned counsel for the petitioner were not even remotely raised by the petitioner before the disciplinary authority, there is nothing on record to show that the petitioner had ever questioned any procedural infirmity in course of departmental proceeding. The Disciplinary Authority, having thus considered his aforementioned defence, had gone to hold as follows:

“-----यदि आरोपित द्वारा आवृत्तिचर्या में भेजे गये 40 गृह रक्षकोंके नामों का सत्यापन नोमिनल रोल से किया जाता तो गृह रक्षक बबली सिंह जिसका बॉण्ड नहीं भरा गया था, प्रशिक्षणमें नहीं जाते और सरकारी राशि का दुरुपयोग नहीं होता। अतएव विभागीय कार्यवाही संचिका में उपलब्ध अभिलेखों के समीक्षोपरान्त संचालन पदाधिकारी के मंतव्य से सहमत होते हुए आरोप की गंभीरता को देखते हुए आरोपित ओमप्रकाश साह, बिहार गृह रक्षा वाहिनी, भोजपुर सम्प्रति मुख्यालय, बिहार गृह रक्षा वाहिनी, पटना को एक वर्ष की वेतन वृद्धि पर रोक लगाया जाता है जो एक कालादाग के समान होगा। निलंबन अवधि में इन्हें जो कुछ मिला उसके अतिरिक्त इन्हें कुछ भी देय नहीं होगा।”

10. Consequently, the order of punishment of stoppage of increment of one year



equivalent to one black remark in addition to next payment of salary beyond the amount of subsistence allowance for the period of suspension cannot be said to be bad on any score and this Court, in fact, is of the opinion that the petitioner was let off quite leniently. It is equally important to note here that the petitioner thereafter had filed an appeal and he in his memo of appeal contained in Annexure-5 also he did not raise any issue as with regard to any procedural infirmity in course of departmental proceeding. In fact, in his memo of appeal, he had reiterated his earlier plea that he had not given the order for sending Babli Singh on training. As a matter of fact, his plea in the memo of appeal was that he had not intentionally committed any mistake and as such he should not be subjected to punishment. The appellate authority had again considered the said plea of the petitioner in his appellate order dated 23.11.2011 and had held as follows:-

“-----आवृत्तिचर्या प्रशिक्षण हेतु भेजे गए गृह रक्षकों की सूची में आरोपित का हस्ताक्षर है। प्रशिक्षण में भेजे जाने के पूर्व आगमन कराए गृह रक्षकों के संबंध में नामांकन पंजी एवं पूर्व नामांकन पंजी से जाँच कर सभी अभिलेख सही पाए जाने पर ही गृहरक्षकों को प्रशिक्षण हेतु भेजना चाहिए था। आरोपित ऐसा नहीं किए जिसके कारण बिना बॉण्ड भराए गृह रक्षक को प्रशिक्षण में भेज दिया गया। आरोप अभिलेखों के आधार पर प्रमाणित है। अतः आरोपित को दिए गए सजा से मैं सहमत हूँ। अपील को अस्वीकृत किया जाता है।”

11. It is, therefore, clear that the order of punishment inflicted against the petitioner does not suffer from any error. The law in this regard is well settled that in course of making judicial review of an order of punishment passed in departmental proceeding, this Court would not go into the merit of the charges and has to only look into the procedural infirmity going to the root of the matter being



devoid of reasonable opportunity to defend himself in course of such departmental enquiry. Reference in this matter may be made to the judgment of the Apex Court in the case of **B.C. Chaturvedi Vs. Union of India & Ors.** reported in 1995(6) SCC 749.”

### FINDINGS

15. Having heard the learned counsel for the parties and after going through the records, it appears that recommendation was made vide letter dated 05.01.2006, for initiating departmental proceeding against 10 officials, including the petitioner. Pursuant thereto, departmental proceeding was initiated against the petitioner and memo of charge was served upon the petitioner. From perusal thereof, it would transpire that although some documents were referred to in the memo of charge, but no list of witnesses was provided to the petitioner, whom the department intended to rely upon during the course of enquiry in the departmental proceeding. Not giving the list of witnesses at the time of issuance of memo of charge is in complete contravention of the provisions contained in Rule 17(3) of the Bihar C.C.A. Rules, 2005. It further appears that during course of the departmental enquiry, no documents were provided to the petitioner and no witnesses were examined during course of the enquiry. The same is in complete violation of the provisions contained in Rule 17(4) of the Bihar C.C.A.



Rules, 2005. Further, since no witnesses were examined during course of enquiry, the petitioner was denied an opportunity to cross-examine the witnesses to rebut the charges which were levelled against the petitioner and the same is in complete violation of the provisions contained in Rules 17(14) of the Bihar C.C.A. Rules, 2005. The petitioner was further denied an opportunity to produce defence witness and the documents to prove his innocence. So far the contention of the learned Senior Counsel for the petitioner to the extent, that the issuance of memo of charge was not by the competent authority is concerned, a Division Bench of this Hon'ble Court in the case of **Rajiv Sinha Vs. Union of India, reported in 2017 (4) PLJR 271** in paragraph nos. 3 and 4, which are quoted hereinbelow, has categorically held as follows:

“3. Still further, in **B.V. Gopinath's case** (supra), an Original Application under Section 19 of the Administrative Tribunal Act, 1985 was filed against the initiation of the departmental proceedings. But present is the case, after the conclusion of the disciplinary proceedings, the final order of punishment has been approved by the Finance Minister. Since the final order has the approval of the Finance Minister, even if it is assumed that the charge-sheet was not approved by the Finance Minister at an earlier stage, will not confer any cause to the petitioner to dispute the order of punishment as with the approval of the final



order, the entire proceedings are deemed to be approved. Still further, what is the prejudice suffered by the petitioner has not been disclosed.

4. It may be stated that the petitioner has not raised such an argument before the Tribunal. Therefore, we find that initiation of enquiry proceedings cannot be permitted to be disputed by the petitioner after culmination of the proceedings with the order of the Finance Minister.”

16. Since the Hon’ble Division Bench in the case of Rajiv Sinha (supra) after considering the judgment passed by the Hon’ble Supreme Court of India in the case of B.V. Gopinath in paragraph nos. 3 and 4 has observed that even if it is assumed that the charge memo/charge-sheet was not approved by the competent authority at an earlier stage, will confer any cause to the petitioner to dispute the order of punishment, as with the approval of the final order, the entire proceeding are deemed to be approved. The said order passed by the Hon’ble Division Bench in the case of Rajiv Sinha (supra) is pending adjudication before the Hon’ble Supreme Court of India in Civil Appeal No.5393-5394 of 2019, therefore, the question raised by the learned Senior Counsel for the petitioner is left open, to be decided in an appropriate proceeding. Further, it appears that the entire departmental proceeding was conducted in complete violation of the provisions contained in Bihar C.C.A. Rules, 2005 and even the learned Co-ordinate Benches of this Court



have proceeded to allow the writ petition filed by some other persons, namely, Dr. Fateh Faiyaz and Raghunandan Jha, against whom similar recommendation was there, including the petitioner vide letter dated 05.01.2006. So far the judgment relied by the State counsel is concerned, the same is not applicable in the present case, since the petitioner from the beginning was requesting for providing the documents and continuously raised objection before the Enquiry Officer.

17. This Court is of the considered opinion that the impugned order contained in Memo No.9554, dated 14.07.2014 deserves to be set aside and is accordingly, set aside. The petitioner is entitled to be reinstated in service along with all consequential benefits. Since the writ petition was filed in 2013 and the petitioner during intervening period has retired, he would be entitled for all the service related benefits till his date of retirement as well as the post retiral benefits, which he would have been entitled, prior to issuance of the order contained in Memo No.9554, dated 14.07.2014, issued under the signature of the Joint Secretary to the Government, General Administration Department, Government of Bihar, Patna. The entire exercise must be completed within a period of four months from the date of receipt/production of a copy of the order. If the order will not



be complied within a period of four months from the date of receipt/production of a copy of the order, the petitioner would be entitled for interest @ 6% from the date of filing of the writ petition till the date of its actual payment.

18. The writ petitioner is allowed in the aforementioned terms.

19. Pending application(s), if any, shall also stand disposed of.

**(Ritesh Kumar, J.)**

*Sanjay/-*

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.05.2026
Transmission Date	NA

