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**(2007) 08 PAT CK 0113**  
**In the Patna High Court**  
**Case No : LPA No. 488 of 2006**

Akshay Lal Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 14-08-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 165, 166

**Citation :** (2008) 56 BLJR 46 : (2007) 115 FLR 952 : (2008) 2 PLJR 504

**Hon'ble Judges :** J.N. Bhatt, C.J.; Kishore Kumar Mandal, J

**Bench :** Division Bench

**Advocate :** Ambar Nath Banerji, for the Appellant;

**Final Decision :** Allowed

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## Judgement

J.N. Bhatt, C.J.—Service of notice on the other side is waived. Upon joint request, this matter is taken up for final hearing at the stage of admission itself.

2. Learned Counsels for the parties have been heard and factual profile emerging from the record has been evaluated in this Letters Patent Appeal, arising out of the judgment, dated 26.4.2006 in writ petition being CWJC No. 9240 of 2005, whereby, the writ petition under Article 226 of the Constitution of India came to be dismissed. We have also, therefore, given our anxious thoughts and consideration to the text and texture of the impugned judgment of the learned Single Judge.

Following facts have, emerged unquestionably from the record.

(i) The appellant - original writ petitioner, was working at the relevant time in the Revenue Department and was posted at Bettiah from 1988 to May, 1996.

(ii) On 15.2.1997, he came to be placed under suspension on the ground that he left his place of posting by making certain serious changes and manipulation in the revenue records, which came to be detected after he left. A preliminary

inquiry, therefore, was directed and it was conducted at the relevant time against the appellant - original writ petitioner who was also asked to submit his explanation.

(iii) By order dated 1.8.2002, it was decided to initiate a departmental inquiry against the petitioner on as many as nine charges.

(iv) The inquiry officer had issued notice to the appellant - original writ petitioner on 31.10.2000 fixing 14.11.2000 as the date for appearance of the appellant - original writ petitioner and filing his show cause but on that date the appellant - original writ petitioner remained absent.

(v) Thereafter, the appellant - original writ petitioner, filed his show cause reply on 25.11.2000.

(vi) The department did not prove the document relied on in the departmental inquiry. The department also did not examine any witness to prove the charges against the delinquent.

(vii) After holding of inquiry the report was submitted and the disciplinary authority like that the Collector, West Champaran, passed the order of dismissal from service against him on the said charges having been found proved.

(viii) Being aggrieved by the said order of dismissal recorded on 18.1.2005, the appellant -original writ petitioner filed a statutory appeal before the Commissioner, Tirhut Division, Muzaffarpur, unsuccessfully.

(ix) Thereafter, the appellant original writ petitioner filed a writ petition under Article 226 of the Constitution of India, challenging the legality and validity of the dismissal order affirmed by the appellate authority, unsuccessfully, again. Hence, this Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court.

3. After having considered the submissions and evaluation of the material on record, we are of the view that although the charges are very serious, as many as nine in number, but they have not been proved seriously. No documentary evidence is brought. Most of the discussions in the inquiry report, as well as, the dismissal order, did not contain as to what documents were examined. Merely because the alleged interpolations by the appellant - original writ petitioner were examined by the Inquiry Officer, without proof thereof in the inquiry, is of no use. No witness is, admittedly, examined on behalf of the department. No reasonable explanation has been placed on record to show as to why the documents, examined, were not placed on the record and witnesses were not examined.

4. No doubt, it is true that the departmental inquiry proceedings cannot be equated with the criminal prosecution but in such proceedings the charges can be evaluated and examined in the light of the material on record and evidence adduced on the doctrine of preponderance of probabilities, like in civil cases. Notwithstanding that, it is incumbent upon the authority to bring on record the

materials relied on by the department in support of the serious charges and the department is also obliged to examine the witnesses and prove the documents. Nothing has been done in this case. It, therefore, leads to an unerring conclusion that the proceedings which were conducted and the findings which were arrived at are contrary to the provisions of the Evidence Act, as well as, principles of natural justice.

5. A rule provision has been made and procedures are laid down under Rule 166 of the Bihar Board's Miscellaneous Rules, 1958, to be followed for the conduct of the Disciplinary Proceeding against the delinquent which is not done in this case for the reasons not known to us. As such, it is really surprising as to how penalty like economic death of an employee in the form of dismissal from service came to be inflicted upon him on the materials which are not proved and that too in absence of examination of any witness. The nature of the proceedings in the departmental or domestic inquiry are quasi judicial and fundamental principles of natural justice as well as Evidence Act are required to be followed.

6. Upon consideration of the overall facts emerging from the present case, while viewed in the light of the relevant and material proposition of law applicable to the service jurisprudence and the said rule of 165 of the Boards Miscellaneous Rules, we are of the opinion that the impugned dismissal order dated 18.1.2005 (Annexure 10) and affirmed by the appellate authority as well as in the writ petition deserves to be quashed and set aside. As a necessary corollary, the impugned judgment of the learned Single Judge shall also stand quashed.

7. This is not all. When there are allegations of serious charges and, that too, as many as nine charges are levelled, it would not be equitable and judicious to put an end to the proceedings or to put a lid on the lis. In our opinion, ends of justice will be satisfied and larger interest will be subserved by directing a de novo departmental proceeding on the same charges, following the principles of natural justice, rule provision and analogous provisions of the Indian Evidence Act. Therefore, while quashing and setting aside the impugned judgment, as well as, dismissal order, we direct a fresh inquiry de novo and to conclude it in accordance with law, as expeditiously, as possible, preferably, within six months from the date of receipt of the writ of this Court, after giving an opportunity to the appellant - original writ petitioner delinquent employee. Learned Counsel for the appellant original writ petitioner has made a statement at the Bar assuring that the petitioner will cooperate for an early completion of the inquiry and will remain present as and when directed by the disciplinary or inquiry authority. In the result, this Letters Patent Appeal shall stand allowed, as above, but without any order as to costs.