

(2026) 08 PAT CK 2515

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.17148 of 2014

Bishwanath Ram

APPELLANT

Vs

The State Of Bihar & Ors.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Bihar CCA Rules, 2005 — Rule 14, 17 (3), 17 (4), 17 (14)
Bihar Service Code — Rule 97 (3), 97(3)
Evidence Act

Citation : (2026) 08 PAT CK 2515

Hon'ble Judges : Ritesh Kumar, J

Bench : Single Bench

Advocate : Mr. Jitendra Prasad Singh, Mr. Varun Krishna Singh, Mr. Venkatesh Kaushik, Mr. SC28- Ajeet Kumar

Final Decision : Allowed

Judgement

Date : 03-08-2026 Heard the learned Senior counsel for the petitioner and the learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following relief(s):-

"1. That, the present application has been filed for issuance of a writ in the nature of certiorari quashing the order dated 14.07.2014 contained in Memo No. 3927 dated 16.07.2014 by which Service Appeal preferred by the petitioner has been dismissed and order dated 12.03.2014 contained in Memo No. 1335 passed in departmental proceeding has been affirmed by which petitioner was dismissed from service and/or to grant any other relief/reliefs for which petitioner is legally entitled in the facts and circumstances of the case."

3. The brief facts, which gave rise to the present writ petition are that the petitioner was appointed in the year 1984 and while he was posted as a Warden at Hazipur Jail, one prisoner namely, Mansoor Khan escaped from jail on 11.11.2011. The petitioner and some other employees, posted in jail were put under suspension w.e.f. 12.12.2011. A decision was taken to initiate

departmental proceeding against the petitioner and two other persons vide memo no. 2711 dated 21.06.2012 issued under the signature of the Inspector General of Prisons, Bihar, Patna and the Enquiry Officer as well as the Presenting Officer were appointed. Simultaneously, the memo of charge was issued to the petitioner on 16.05.2012, wherein two charges were levelled against the petitioner. The petitioner participated in the departmental enquiry and after conducting the departmental enquiry, the Enquiry Officer submitted his report before the disciplinary authority vide memo no. 1200 dated 09.03.2013. Pursuant thereto the disciplinary authority vide his memo no. 1183 dated 05.03.2013 issued second show cause notice to the petitioner and along with the second show cause notice, the enquiry report was also provided to the petitioner. The petitioner submitted his reply to the second show cause notice on 03.04.2013, wherein he denied the charges levelled against him and he also took a plea that while issuing the memo of charge, Rule 17 (4) of the Bihar CCA Rules was violated, since no list of documents or list of witnesses were provided to the petitioner. He further requested the disciplinary authority to exonerate him from the charges, levelled against him. The disciplinary authority by the impugned order contained in memo no. 1335 dated 12.03.2014 proceeded to award the punishment of dismissal from service against the petitioner and two other persons in terms of the Rule 14 of the Bihar CCA Rules, 2005. It was further directed that during the period under suspension, nothing will be paid to the petitioner and two other persons, apart from the subsistence allowances, which has been paid during the period under suspension. The petitioner preferred statutory appeal before the appellate authority on 12.04.2013, however the same was also dismissed by the appellate authority vide his order dated 14.07.2014, which was communicated to the petitioner, along with two others vide memo no. 3927 dated 16.07.2014.

Submission On Behalf Of The Petitioner

4. The learned Senior counsel for the petitioner submits that the departmental proceeding initiated against the petitioner was in complete violation of the provisions contained in Rules 17 (3) and (4) of the Bihar CCA Rules, 2005, inasmuch as that along with the memo of charge, no list of witnesses were provided to the petitioner. Since, no list of witnesses were provided to the petitioner along with the memo of charge, during course of enquiry, none of the documents which have been relied upon by the Enquiry Officer were proved by the respective authors/witnesses. He further submits that since no witnesses were examined during course of Enquiry, by the enquiry officer, the petitioner was denied an opportunity to cross-examine the witnesses, which is in complete violation of the provisions contained in Rule 17 (14) of Bihar CCA Rules, 2005. He further submits that the disciplinary authority, while considering the defence taken by the petitioner, that the proceeding against him was conducted in violation of the provisions contained in Rule 17 (4) of the Bihar CCA Rules did not pass any order on the same and in a mechanical manner rejected the reply submitted by the petitioner and proceeded to award the punishment of dismissal

from service against him. He further submits that no show cause notice was issued to the petitioner in terms of the Rule 97 (3) of the Bihar Service Code for non-payment of salary to the petitioner for the period under suspension, apart from the subsistence allowance, which have already paid to the petitioner. The learned Senior counsel for the petitioner further submits that the punishment awarded to the petitioner is disproportionate to the charges levelled against him.

5. In support of his contention, the learned Senior counsel for the petitioner refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **(2009) 2 SCC 570 (Roop Singh Negi vs The Punjab National Bank & Ors.)** wherein in paragraph nos. 14 and 23 it has been 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."

6. 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 **(2010) 2 SCC 772 (State of Uttar Pradesh & Ors vs Saroj Kumar Sinha)**, wherein in paragraph nos. 27, 28 and 30 it has been held as follows:

"27. A bare perusal of the aforesaid sub- rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to

avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the 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.

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

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 **2026 (3) PLJR 125 SC (Jai Prakash Saini Vs. Managing Director U.P. Cooperative Federation Ltd. And Ors.)**, wherein in paragraph nos. 17 and 18, it has been held as follows:

"17. From the decisions of this Court in Sur Enamel (supra): (AIR 1963 SC 1914) and Kharak Singh (supra): (2008 AIR SCW 7507), followed in Chamoli District Cooperative (supra): (AIR 2016 SC 2510), which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would have to take steps first to lead evidence against the workmen/delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen/delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.

18. In the instant case, we find that the department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/recovery can-not be sustained. We therefore allow this appeal. The impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a de novo enquiry, if it so desires, within a period of six months from the date of this order. If the Federation does not hold de novo enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case de novo enquiry is held,

other service benefits including arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry."

8. 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 2026 SCC OnLine SC 1109 (**Surekah domaji Bele Vs. The Executive Engineer, Testing Division MSEDCL**), wherein in paragraph nos. 101, 106, 107, 108, 109, 110, it has been held as follows:-

"101. The Respondent has maintained that the proved charges were serious and related to discipline and office functioning. While we are not inclined to reopen the finding of misconduct, the question of punishment stands on a different footing. The punishment must bear a reasonable relationship with the gravity of the misconduct, the past service record, the surrounding circumstances and the impact of the misconduct on the establishment as also observed by the Labour Court while referring the finding of the alleged misconduct proved.

106. Dismissal from service is the severest form of penalty which can be inflicted on a delinquent employee in service jurisprudence. It brings the relationship of employer and employee to an end permanently, and ordinarily deprives the employee of the incidents of past service, including retiral benefits. It does not lead merely to the loss of the existing source of income for the employee but also for the dependent family members. Thus, it will have a devastating effect not only on the dismissed employee but also on all these who are dependant on the employee. Because of the severity of its impact not only on the employee but also to his dependents, the disciplinary authority must be very careful in seeking to impose the severest form of punishment of dismissal.

It further carries consequences beyond immediate cessation of employment. It leaves a permanent stigma on the service record of the employee concerned, and may impair future employment prospects, particularly in public employment, statutory bodies, public sector undertakings and other regulated establishments where antecedents and service record are material. For this reason, dismissal must remain reserved for cases where the misconduct is of the most serious nature where elements of synthetic consideration would be undesirable and inappropriate.

107. The misconduct found proved against the Appellant relates to indiscipline, insubordination, and the consequent lampering with documents. We are not minimizing the importance of discipline in an office establishment. However, the material presently noticed does not show corruption, illegal gratification, moral turpitude, misappropriation of funds, proved pecuniary loss to the employer, public scandal, or conduct bringing the institution into public disrepute. The allegations substantially appear to arise out of internal office functioning and service-related conflict and did not play out in the public domain.

108. In the present case, we do not find that the competent authority undertook such an exercise of evaluating various relevant factors. The order does not reflect consideration of the Appellant's long service, past record, age, absence or presence of dishonesty, or absence or presence of actual loss as also commended by the Labour Court.

109. Even where the Regulations include dismissal as one of the permissible punishments for acts of misconduct, the authority is not relieved of its duty to consider all relevant factors to see whether the facts of the case truly warrant the most extreme form of penalty. The mere fact that a proved act falls within the broad category of "misconduct" under the Regulations does not mean that dismissal must follow as a matter of course.

110. *Dismissal is ordinarily justified where the misconduct is of such gravity that continuance of the employee would be wholly incompatible with discipline, trust or institutional functioning. Cases involving corruption, illegal gratification, moral turpitude, misappropriation, acts causing substantial loss to the employer, or conduct showing complete unfitness for continued service stand on a different footing. However, where the misconduct does not involve corruption, moral turpitude, financial misappropriation or proved loss to the employer, and where there is long service without much blemish, the disciplinary authority must carefully examine whether any lesser punishment would meet the ends of justice.*"

Submission On Behalf Of Respondents

9. Per Contra, the learned counsel appearing on behalf of the State, while referring to the counter affidavit would submit that while the petitioner was posted in the District jail at Hazipur on 11.11.2011, an undertrial prisoner namely Mansoor Khan fled away from the hospital ward, which was under control of the petitioner at that time. He submits that vide letter no. 3084 dated 12.11.2011 issued under the signature of the Superintendent, District Jail, Hazipur with regard to the incidence of fleeing away of one prisoner. The I.G. prison directed for taking action against the petitioner and negligent persons. The A.I.G., Prison was directed to make an enquiry and to submit his report. The A.I.G., Prison submitted his enquiry report on 09.12.2011 wherein he found the petitioner and others to be negligent in their duties and he recommended for taking action against the petitioner and other persons. The petitioner was put under suspension w.e.f. 12.12.2011 and accordingly memo of charge was issued to the petitioner on 16.05.2012. The departmental proceeding was initiated and the petitioner duly participated in the same. The Conducting Officer, after conducting the departmental enquiry submitted his enquiry report on 07.01.2013 wherein he found the charges levelled against the petitioner to be proved. Pursuant thereto second show cause notice was issued to the petitioner vide memo no. 1183 dated 05.03.2013. The petitioner in compliance thereof, filed his reply to the second show cause notice on 03.04.2013. The disciplinary authority, being not satisfied with the reply submitted by the petitioner to the second show cause notice proceeded to dismiss the petitioner from service vide the impugned order contained in memo no. 1335 dated 12.03.2014. The petitioner preferred statutory appeal before the appellate authority on 12.04.2014, however the same was dismissed by the appellate authority vide order dated 14.07.2014 and the same was communicated to the petitioner and other similarly situated person vide memo no. 3927 dated 16.07.2014.

10. The learned counsel for the State submits that before initiation of the departmental proceeding and till its conclusion, all the provisions contained in Bihar CCA Rules 2005 were followed, inasmuch as that the disciplinary authority and the Enquiry Officer gave proper opportunity to the petitioner to participate in the departmental enquiry. The Enquiry Officer, after taking note of the reply submitted by the petitioner and the documents submitted by the Presenting Officer, proceeded to submit his report and on the basis of said report the

disciplinary authority after duly considering the reply submitted by the petitioner, passed the impugned order of punishment.

Consideration

11. Having considered the rival submissions and after going through the records, it appears that while issuing memo of charge no list of witnesses was provided to the petitioner, which is in complete violation of the Rules 17 (3) and (4) of the Bihar CCA Rules, 2005. Even during course enquiry, the Enquiry Officer did not bothered to direct the Presenting Officer to produce witnesses on behalf of the department. He himself assumed the role of the Presenting Officer and proceeded to prove the charges levelled against the petitioner, which is in complete violation of Rule 17 (14) of the Bihar CCA Rules 2005, since no witnesses were produced during course of enquiry and the petitioner was denied an opportunity to cross-examine the witnesses to rebut the charges, which were levelled against him. The documents, which have been relied by the Enquiry Officer, during course of enquiry were never proved by the witnesses. Further, the disciplinary authority while awarding the punishment against the petitioner of dismissal from service and non-payment of any amount to the petitioner, except the subsistence allowance, for the period under suspension, he choose not to issue any show cause notice to the petitioner, in terms of Rule 97(3) of the Bihar Service Code, therefore the order denying any salary to the petitioner for the period under suspension is in complete violation of the said rules. The charges against the petitioner were not with regard to defalcation, causing loss to the State Exchequer, misappropriation, corruption or act causing substantial loss to the employer. In view of the judgment of the Hon'ble Supreme Court of India in the case of **Surekah domaji Bele (supra)**, the case of the petitioner is fit for consideration by the disciplinary authority for lessor punishment.

12. At this State it has been informed at bar, that the petitioner has superannuated from service on completion of sixty years of age in 2021. This Court in ordinarily circumstances, would have remitted the matter back to the respondent authorities for proceeding afresh from the defective stage, which is clearly apparant in the present case, however in view of the judgment of the Hon'ble Supreme Court of India in the case of **(Allahabad Bank & Ors. V/s Krishna Narayan Tewary) reported in 2017 (2) SCC 308**, wherein in paragraph no. 8 it has been held as follows:

"8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.

13. Similar view has been taken by a Hon'ble Division Bench of this Court in the case of **(State of Bihar and Ors. Vs. Vikash Kumar @ Vikas Kumar)** passed in L.P.A. No. 446 of 2024. In view of the judgment referred to above, this Court is refraining from remitting the matter back to the respondent authorities, for proceeding afresh.

14. Accordingly, the impugned order contained in memo no. 1335 dated 12.03.2014 issued under signature of the Inspector General of Prison and Reforms, Government of Bihar, Patna, so far it relates to the petitioner is concerned and the order dated 14.07.2014 communicated to the petitioner vide memo no. 352 dated 16.07.2014 passed by the Principal Secretary, Prison and Reforms, Government of Bihar, Patna, so far it relates to the petitioner, deserves to be set aside and are accordingly set aside. The petitioner will be entitled for payment of entire salary for the period during which he remained under suspension, after deducting the amount already paid to him towards subsistence allowance. He will further be entitled for payment of salary @ 50% from the date of his dismissal, till the date of his retirement, in view of the judgment of the Hon'ble Supreme Court of India in the case of **(Dinesh Chandra Sharma Dead through LRS Vs. Bhartiya Paryatan Vikas Nigam Limited & Anr passed in SLP (C) No. 8180 of 2020)**, since no statement has been made by the petitioner to the effect that he was not gainfully employed during the period under termination and said fact has also not been pleaded by the State authorities in their counter-affidavit that the petitioner was gainfully employed. The petitioner would be entitled for his entire post-retiral benefits, for which he would have been entitled, prior to passing of the impugned order of punishment dated 12.03.2014.

15. The entire exercise in this regard must be completed within a period of four months from the date of receipt/production of a copy of the order before the respondent authorities.

16. The writ petition is allowed with the aforementioned observations and directions.

17. Pending applications, if any, shall also stands disposed.