

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.996 of 2017

Vijay Kumar Sinha, son of late Ramashankar Prasad, resident of Panchwati Colony, Bari Patan Devi Road, Alamganj, P.O.-Gulzarbagh, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Director General-cum-Inspector General of Police, Bihar, Old Secretariat, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Old Secretariat, Patna.
3. The Inspector General of Police, Darbhanga Zone, Darbhanga.
4. The Deputy Inspector Genral of Police, Darbhanga Range, Darbhanga.
5. The Superintendent of Police, Madhubani.
6. The Deputy Superintendent of Police (Head Quarter)-cum-Conducting Officer, Madhubani.
7. Sri Arvind Jha, the then Police Inspector-cum-Officer-In-Charge, Town Police Station, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate Ms. Vaishali, Advocate Mr. Abhishek Kumar, Advocate Mr. Rishik Singh Rajput, Advocate Mr. Gyanendra Diwaker, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE KUMAR MANISH
CAV JUDGMENT

Date : 03-09-2026

1. Heard the learned counsel for the Petitioner and learned counsel appearing on behalf of the State- respondents.

2. By way of this writ application the Petitioner interalia prays for the following reliefs:

- i. *To set aside the appellate order dated 02/03.10.2016 (Annexure- 2), communicated vide Memo No. 898 dated 03.10.2016, whereby and whereunder the petitioner's appeal dated 29.08.2014, against the order of dismissal has been rejected;*
- ii. *To quash the order of punishment dated 12.06.2014 (Darbhanga Range Order No. 160/14 issued under Memo No. 813, Annexure- 47),*



whereby and whereunder the petitioner has been dismissed from the post of Sub-Inspector of Police;

- iii. To hold the preliminary enquiry report dated 12.07.2011 (Annexure-38) submitted by Sri Arvind Kumar Jha, Respondent No. 7, to be a table enquiry report and hence, not fit to be relied upon;*
- iv. To hold the findings of the Conducting Officer recorded in his report dated 11.10.2012 (Annexure-23), to be perverse and in violation of the principles of natural justice.*

3. Learned Counsel for the Petitioner submits that the Petitioner, Sri Vijay Kumar Sinha, was at the relevant time posted as Station House Officer, Lakhnaur Police Station, District Madhubani. On 08.07.2011, the Petitioner was placed under suspension vide Darbhanga Range Order No. 263/2011 issued under Memo No. 1557 dated 08.07.2011, followed by District Order No. 701/11 issued vide Memo No. 2274 dated 08.07.2011 (Annexures 5 & 6).

An FIR was thereafter lodged against the petitioner as Lakhnaur P.S. Case No. 50/11 dated 16.07.2011 (Annexure-7), on allegations concerning the escape of an accused, Md. Farukh, and irregularities in the recovery/seizure of stolen property in connection with Khar (Mumbai) P.S. Case No. 300/11.

4. It is further submitted that on 10.06.2012, a charge-sheet (Memo No. 1255, Annexure-8) containing five charges was framed, and the then, Deputy Superintendent of Police (HQ), Madhubani, was appointed as a



Conducting Officer, with a direction to complete the proceeding within three months. The five charges, in substance, alleged that the petitioner:

- (i) proceeded on leave without informing his superiors after an accused fled during a joint raid with Mumbai Police;
- (ii) secretly obtained recovery of stolen articles through Kamal Sah and Probationer SI, Sanjeev Kumar Suman and prepared a single, composite seizure list without informing his superiors;
- (iii) suppressed from the Mumbai Police team and the informant, that further articles had been recovered and that the accused was in custody;
- (iv) failed to keep the accused in proper custody, resulting in his disappearance from the police station during the enquiry; and
- (v) thereby had maligned the image of the Madhubani and Bihar Police.

5. The suspension order was revoked only on 22.11.2012, by District Order 1532/2012 followed by District Order No. 1591/2012 dated 06.12.2012 in compliance to the order dated 09.07.2012 passed in CWJC No. 10244 of 2012.

Significantly, the Supervisory Officer-cum-Sub-Divisional Police Officer, Jhanjharpur, in his supervision note dated 28.09.2013



having Memo No. 860/Sub (Annexure-12), himself recorded that during investigation, it transpired that the allegations against the petitioner were not found correct in connection with Lakhnaur P.S. Case No. 50/11.

6. It is further contended by the counsel for the Petitioner, that immediately on receipt of the charge-sheet, the Petitioner, by petition dated 20.06.2012, sought copies of the defense documents to file an effective written statement.

This was followed by reminders dated 10.07.2012, 10.08.2012, 25.08.2012, 03.09.2012 and 10.09.2012 (Annexures 13 to 18). Notwithstanding the same, on 10.07.2012 itself before the Petitioner was allowed to file his preliminary written statement the Conducting Officer commenced recording the statements of prosecution witnesses, in violation of Para 12 of Appendix-49 of the Police Manual and Rule 7(d) of Police Order No. 109 (Annexures 21 & 22).

7. The Petitioner filed his preliminary written statement on 18.09.2012 and his final written statement on 10.10.2012 (Annexures 19 & 20), expressly under protest and reserving his objections. The Conducting Officer nevertheless submitted his report on 11.10.2012 (Annexure-23) holding Charges 2 to 5 proved, while Charge No. 1 was held not proved.

8. It is submitted by the counsel for the Petitioner that, the Conducting Officer himself examined five witnesses in support of the charges and, of



the witnesses so examined, the Petitioner was accorded with an opportunity to cross examine only one witness, namely, Respondent No. 7, Sri Arvind Kumar Jha. Further the report dated 11.10.2012, and the order of punishment, rests substantially on documents that were **never exhibited in the enquiry nor supplied to the petitioner**, despite specific and repeated demand.

9. It is further contended that from the perusal of enquiry report dated 11.10.2012, which is marked as Annexure 23 to the writ petition, that **there was no Presenting Officer, when the Petitioner was proceeded departmentally**. The conducting officer himself had assumed that charge of the presenting officer and had found charges 2 to 5 to be proved against the Petitioner.

It has been stated that one Sanjeev Kumar Suman, the then Sub-Inspector was also posted at the Lakhnour Police Station at the relevant time and was also subjected to departmental proceeding for the same incident and Vide order dated 01.09.2014 he was dismissed from the post of Sub-Inspector, against which an appeal was preferred and the same was dismissed.

Assailing both the orders, Sanjeev Kumar Suman, had moved before this Hon'ble Court in CWJC No. 7986 of 2015. The said writ application was allowed and the order of his dismissal was set aside vide order dated 08.03.2021.



10. The counsel for the Petitioner further submits that the unreliability of the preliminary report dated 12.07.2011 (Annexure-38), which contained the statements made by Respondent No. 7, stands independently exposed by his own answers in cross-examination recorded on 30.09.2012 (Annexure-42).

11. It is further submitted that Sri Karm Lal, SDPO Sadar, Madhubani, in his own statement dated 10.07.2012, before the Conducting Officer, stated that he had merely forwarded the report of Respondent No. 7 vide his Memo No. 806/Sadar dated 12.07.2011, and had conducted no independent enquiry of his own (Annexures 36 & 37), notwithstanding which the disciplinary authority, at sub-para 9 of the impugned punishment order, purported to place reliance on an "enquiry report of the SDPO Sadar, Madhubani" that was never in fact prepared, exhibited, or supplied.

12. Per contra, the Learned Counsel for the respondents, in the counter affidavit filed on behalf of Respondent No. 6, has pleaded that the Petitioner was posted at Lakhnour as SHO and he did not properly conduct his duty and also did not properly assist the Mumbai Police in Khar P.S. Case No. 300/2011.

The stolen article was recovered but was not informed by him to Khar Police or any other officer superior to him in the same police station. In the departmental proceeding, he was found guilty and was therefore, awarded with the punishment.



13. The counsel for the state respondent further submits that the Superintendent of Police, Madhubani, found the case true in Lakhnour P.S. Case No. 50/2011 under the offences of Indian Penal Code, 1860, against seven accused persons including the Petitioner.

The fact that the report of conducting officer was not enclosed, is vehemently disputed. The Petitioner also took leave for four days and left on 22.04.2011, without informing the senior officials. The Petitioner returned on 26.06.2011 and enquired one Kamal Sah and directed him to be present with Raju @ Lal Sah, at the police station.

When the said persons were present at the police station, it was informed to the Petitioner that the stolen articles were handed over to the then PSI near the bank of Kamla River, and some article was given to a person named Md. Farooq, who was raided and the remaining articles was also recovered by the then PSI. However, the seizure list was prepared in one seizure list although the recovery of articles was done from two different places.

The Petitioner included the article which was returned by the then PSI in one seizure list. The Petitioner called Md. Farooq and kept him in custody, the fact which was concealed by him. It is further contended that the informant informed that the recovered articles was less than the actual articles stolen. Furthermore, it has been contended, that the accused, namely, Md. Farooq fled away from custody with the aid of the Petitioner.



Consequent to which the Petitioner was suspended from service vide Darbhanga Area Order No. 263/2011 dated 08.07.2011.

14. The counsel for the Respondent State further submits that the departmental proceeding had been conducted in compliance to the procedure outlined in law and that there is no infirmity in the dismissal order as well as appellate order.

It is submitted that from perusal of the allegation against the Petitioner, exhibits, statement of witnesses and opinion of the Enquiry Officer of the Departmental Proceeding, there exists no evidence to disagree with the order of dismissal from service.

It is submitted that no Presenting Officer is mandated under the Police Manual for a proceeding of this nature and the documents relied upon were either supplied or were not germane, hence, the appeal was rightly considered and rejected on the ground that identical allegations had culminated in a charge-sheet in Lakhnaur P.S. Case No. 50/11.

15. It is further not disputed that this Court, in C.W.J.C. No. 109 of 2015, vide order dated 23.08.2016, had already once quashed the earlier Appellate rejection and directed the Appellate Authority to hear the Petitioner afresh, with a specific direction that the petitioner should appear before the Zonal IG of Police, Darbhanga Range, on 06.09.2016.

The petitioner did so appear, was told that a date of hearing would be communicated. None was in his representation dated 22.09.2016, for



fixation of a date went unanswered and the appeal came to be rejected vide Memo No. 898 dated 03.10.2016 without any hearing at all in the very teeth of this Court's earlier direction.

16. Learned counsel for the petitioner placed reliance, principally, on the decision rendered in **Union of India v. Ram Laxhan Sharma, (Civil Appeal No. 2608 of 2012, decided on 02.07.2018) reported in AIR 2018 SC 4860**, where the Supreme Court, examining the effect of non-appointment of a Presenting Officer, held that "if the Inquiry Officer starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias would come into play."

The Court further reiterated the settled position that if the Inquiring Authority plays the role of a prosecutor and cross-examines defense witnesses or puts leading questions to the prosecution witnesses, clearly exposing a biased state of mind, the inquiry would be opposed to the principles of natural justice, though mere non-appointment of a Presenting Officer, does not by itself vitiate an enquiry unless prejudice is shown.

17. The aforesaid case also cites, that a Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in **A.K. Kraipak v. Union of India reported in (1969) 2 SCC 262**, wherein it was held that the aim of the rules of Natural Justice is to secure justice or to put it negatively to prevent miscarriage of justice.



The concept of natural justice has undergone a great deal of change in recent years. Initially recognized as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognized. In para 20 the following has been held:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably....”

18. Reliance has also been placed on **State of U.P. v. Saroj Kumar Sinha reported in (2010) 2 SCC 772**, wherein the Hon’ble Apex Court had laid



down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held:

“28. An Enquiry 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 unrebutted 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 Enquiry 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.”

19. Counsel for the Petitioner submits that in the case of **Rajesh Ranjan Poddar v. State of Bihar in C.W.J.C. No. 2330 of 2015**, a Bench of this Court, on facts materially similar to the present case, found that no witness was led by the department nor was any attempt made by the Presenting Officer to substantiate the charges, and therefore, the order of dismissal and the appellate order as being in violation of the applicable disciplinary rules and the principles of natural justice was set aside.

20. The counsel for the Petitioner has also placed reliance on the case of **Sanjeev Kumar Suman v. State of Bihar, having C.W.J.C. No. 7986 of 2015**, wherein the case of the co-delinquent official proceeded against with, on identical facts arising from the very same incident, resulted in the setting aside of the dismissal order as well as the rejection of the departmental appeal. Parity of treatment, in the absence of any distinguishing feature between the two cases pointed out by the respondents, is a legitimate consideration in service jurisprudence.

21. The core issues for determination in the instant writ application are enunciated hereunder:



- i. Whether the failure of the respondent authorities to supply the documents sought by the Petitioner during departmental enquiry, vitiates the proceeding as being contrary to the principles of natural justice;
- ii. Whether non-appointment of Presenting Officer ipso facto vitiates the inquiry.

22. On meticulous examination of the facts and, settled principles of law, it is not out of place to state that the Disciplinary Authority performs quasi-judicial functions. The said authority is required to maintain absolute fairness in conduct of departmental enquiry. The charges leveled against the delinquent officer must be found to have been proved. The Inquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties as has been observed in the celebrated judgement of **Roop Singh Negi vs. Punjab National Bank and others reported in (2009) 2 SCC 570.**

23. In the case of **Ganesh Pandey v. State of Bihar having LPA No. 410 of 2022**, while dealing with a limited issue of failure of respondent authorities to supply the documents sought by the appellant during the departmental, causing prejudice to the delinquent, thereby vitiating the proceeding as being contrary to the principles of natural justice has categorically held that:



“.....the enquiry proceedings cannot be said to have been conducted in a fair, transparent, or bona fide manner. Rather, the manner in which the proceedings have been conducted gives rise to a clear impression that the enquiry was reduced to a mere formality, without adherence to the essential safeguards required under law. The opportunity purportedly afforded to the appellant was, therefore, illusory and not in conformity with the principle of natural justice.

.....this Court is clearly of the view that the entire departmental proceeding stands vitiated on account of violation of the principles of natural justice, resulting in manifest prejudice to the appellant. The learned Single Judge, has not appropriately appreciated the effect of such non-supply of documents on the fairness of the enquiry, and therefore the impugned order cannot be sustained in law”.

24. Applying the aforesaid principles of law at hand, this Court is of the view that non- supply of documents to the Petitioner even on being requested for same, is against the very principle of natural justice and the respondent authorities in not acceding to the request of the Petitioner have acted in contravention of the principles of natural justice.



25. Insofar as, the Second Issue is concerned, it is relevant to cite the case of **Union of India vs. Ram Lakhan Sharma (supra)**, wherein categorical observation has been made with respect to the issue that when the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? The said issue was answered in the following terms:

“We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a



manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place”.

26. Significantly, however, it is not disputed and is apparent from the face of both the order of dismissal dated 12.06.2014, and the appellate order dated 02/03.10.2016, emanate from the same authority, the Deputy Inspector General of Police, Darbhanga Range. This is a matter squarely taken up in the petitioner's rejoinder, invoking the settled principle that no one can be a judge in his own cause (*nemo iudex in causa sua*), and hence, in the considered opinion of this Court, it is therefore, stated that the aforesaid principle of natural justice also has not been effectively complied with, in the instant case.

27. It is a well settled law that in exercising jurisdiction under Article 226 of the Constitution over an order of punishment passed in a departmental proceeding, this Court does not sit in appeal over the sufficiency of evidence.

It does, however, examine whether the proceeding has been conducted consistently with the principles of natural justice and the statutory rules governing it, and whether the findings are based on some legal evidence or are, instead, the product of surmise and conjecture.

28. In view of the aforesaid backdrop, this Court is constraint to hold that the disciplinary proceeding as against the Petitioner suffers from the



infirmities, thereby causing prejudice to the Petitioner. The Conducting Officer commenced recording the statements of witnesses before the petitioner was permitted to file even his preliminary written statement, which is contrary to Para 12 of Appendix-49 of the Police Manual and Rule 7(d) of Police Order No. 109.

No Presenting Officer was appointed, and the Conducting Officer himself assumed that role while simultaneously adjudicating upon the charges. Furthermore, the finding of guilt on Charges 2 to 5 rests substantially on documents and the enquiry reports of the Superintendent of Police and SDPO Sadar, none of which were exhibited in the enquiry or ever supplied to the petitioner despite his six successive representations between September 2012 and May 2014.

29. Moreover, the appellate order dated 02/03.10.2016 was passed without affording any hearing to the petitioner at all, in direct violation of this Court's earlier order dated 23.08.2016 in C.W.J.C. No. 109 of 2015, and on the face of the record by the very authority (DIG, Darbhanga Range) that had passed the original order of dismissal, offending the principle that no one may be a judge in his own cause.

It is also not out of place to hold that, a similarly situated co-delinquent official, proceeded against on the identical facts of the very same incident, has already had his dismissal order and appellate rejection set aside by this Court in C.W.J.C. No. 7986 of 2015.



30. The aforesaid infirmities cannot be treated as mere technical or procedural irregularities. Considered cumulatively, they have caused real and demonstrable prejudice to the petitioner in the conduct of the departmental proceeding.

The case, therefore, stands on a footing materially different from one involving the mere non-appointment of a Presenting Officer, which, by itself, may not necessarily vitiate the enquiry in terms of the ratio laid down in **Union of India v. Ram Lakhan Sharma (supra)**. In the present case, the non-appointment of a Presenting Officer was accompanied by the Conducting Officer himself assuming that role, reliance upon material which was neither duly proved nor made available to the petitioner, and denial of an effective opportunity to defend himself.

In these circumstances, the enquiry report dated 11.10.2012, and the consequential order of dismissal dated 12.06.2014 as well as the rejection order of appeal dated 02/03.2016, cannot be sustained.

31. For the reasons recorded hereinabove, this writ application is allowed in the terms stated hereunder:

- 1 The appellate order dated 02/03.10.2016 (Annexure-2), communicated vide Memo No. 898 dated 03.10.2016, is set aside;
- 2 The order of punishment dated 12.06.2014, contained in Darbhanga Range Order No. 160/14 issued under Memo No. 813



(Annexure-47), whereby the petitioner was dismissed from service, is quashed and set aside;

3 The petitioner shall be entitled to all consequential benefits arising out from the quashing of the dismissal order, including notional continuity in service up to the date of his superannuation (01.10.2014) and the retiral and other benefits admissible in law, to be computed and disbursed by the respondents within **3 months** from the date of receipt/production of a copy of this order.

32. This writ application stands **allowed** accordingly, with no order as to costs.

(Kumar Manish, J)

Sanjeev/-

AFR/NAFR	AFR
CAV DATE	17.08.2026
Uploading Date	03.09.2026
Transmission Date	

