

(2021) 06 PAT CK 0117

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 12588 Of 2019

Suresh Prasad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: June 25, 2021**Acts Referred:**

- Constitution Of India, 1950 - Article 226
- Bihar Government Service (Classification, Control And Appeal) Rules, 2005 - Rule 17, 18, 18(2)
- Bihar Pension Rules, 1950 - Rule 43B, 139
- Bihar Government Service Conduct Rules, 1976 - Rule 3(i)(ii)(iii), 17(5), 17(6)
- Prevention of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2)

Hon'ble Judges: Rajeev Ranjan Prasad, J**Bench:** Single Bench**Advocate:** Akhilesh Dutta Verma, Uday Shankar Saran Singh**Final Decision:** Allowed

Judgement

This application was initially filed for the following reliefs:

â€œ(i) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of entire

salary with consequential benefits from 01.10.2008.

(ii) For issuance of an order, direction including writ in the nature of mandamus commanding the respondents to make payment of monthly pension

regularly month to month on the 1st of every month.

(iii) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to payment of gratuity with

interest from the date it was due i.e. 31.08.2016 till the date of payment is made.

(iv) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of leave encashment with interest at the market rate from the date it was due till the date payment would be made.

(v) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of provident fund with interest at the market rate from the date it was due till the date payment would be made.

(vi) For issuance of an order, direction or writ in the nature of mandamus commanding the respondents to make payment of Group Insurance with interest at the market rate from the date it was due till the date payment would be made.

(vii) For issuance of an appropriate declaration holding that the petitioner was entitled for grant of pension, gratuity, leave encashment amount immediately after quashing the order of major punishment passed in C.W.J.C. No. 19280 of 2015 dated 10.04.2018.

(viii) For issuance of an appropriate declaration holding that the petitioner is entitled for payment of interest as the delay has been caused due to the indifferent attitude of the respondents.

(ix) For any other relief/reliefs to which petitioner may be found entitled in the facts and circumstances of the present case.â€

2. On 25.06.2019 when the writ application was taken up for consideration, the respondents were directed to file their counter affidavit. On

09.01.2020, a learned Bench of this Court directed the respondents to file an affidavit explaining as to whether the pension of the petitioner has been

fixed on the basis of his last pay scale on the date of superannuation. In fact, the court directed the authorities to ensure that the payment is made to

the petitioner in the correct scale to which he was entitled. The court also observed that under the normal circumstances the pension is relatable to the

last pay drawn on the date of superannuation.

3. As the hearing in the matter progressed, on 03.07.2020 learned A.C. to learned G.P. 19 informed this court that final order has been passed in the

disciplinary proceeding and he undertook to file a supplementary affidavit in this regard. At this stage, the petitioner filed his fourth supplementary affidavit in which it was disclosed that the respondent authorities had issued memo no. 2832 dated 10.08.2020 (Annexure ~11~ to the supplementary affidavit) whereby the following punishments were imposed:-

- (i) From the date of issuance of notification 100% pension of the petitioner has been permanently stopped;
- (ii) The 10% of the withheld pension and gratuity shall not be paid;
- (iii) For the suspension period except the subsistence allowance no other benefit would be paid;
- (iv) Since the petitioner has retired on 31.08.2016, his suspension is revoked with effect from the said date.

4. The petitioner, thereafter filed Interlocutory Application No. 01 of 2020 with a prayer to amend the writ application to challenge the memo no. 2832

dated 10.08.2020 (Annexure ~12~ to the I.A. No. 01/2020) by which major punishments were inflicted upon the petitioner.

5. The petitioner also prayed for a direction to pay the arrears of salary to the petitioner from 30.09.2008 till the date of his retirement i.e. 31.08.2016

in different level and lastly at level 11 as per pay scale matrix (Annexure ~8~ to the writ application) and also to fix the pension of the petitioner

on the basis of his salary as applicable on the date of his retirement with full consequential benefits. He further prayed for payment of all the retiral

dues such as arrears of pension, leave encashment, gratuity etc. on the basis of his salary applicable on the date of retirement.

6. On 05.10.2020, Interlocutory Application No. 01 of 2020 was taken up for consideration and the same was allowed. The State respondents were

given further time to file additional counter affidavit. Thereafter, the State respondents filed their supplementary counter affidavit dated 05.11.2019

and again on 10.03.2020. After completion of pleadings the writ application has been heard through virtual mode and the judgment was reserved.

Since certain documents such as the Prapatra ~ka~ and the enquiry report which are available with the records of C.W.J.C. No. 19280 of 2015

but are not available with this record, this Court requisitioned the records of Writ Petition No. 19280 of 2015.

Brief facts of the case

7. Petitioner happens to be an employee of Bihar Cooperative Service. In the year 2007 when he was serving as District Cooperative Officer cum

Assistant Registrar, Cooperative Societies, East Champaran at Motihari, he was served with a charge-sheet. In respect of the charges contained in

the charge-sheet dated 08.11.2007 the inquiry was held and it is the case of the petitioner that the inquiry officer exonerated the petitioner from charge

no. 1 and 2 and other five charges. The disciplinary authority, however, directed the inquiry officer to review his finding relating to charge no. 1 & 2

and once again the inquiry officer categorically held that charge no. 1 & 2 were not proved. The disciplinary authority, however, gave a notice of

disagreement with respect to charge no. 1, 2, 5, 6 & 7 to which the petitioner had submitted his reply dated 24.07.2013. During pendency of this first

proceeding, on 29.04.2009, another departmental proceeding vide memo no. 1101 dated 29.04.2009 was initiated on the basis of the letter of the S.P.

Vigilance relating to a Vigilance Case of trap with a sum of Rs. 11,000/-.

8. On the complaint of one Sri Ram Rekha Prasad, the vigilance had led the trap and arrested the petitioner on 30.09.2008 alleging recovery of tainted

G.C. Notes of Rs. 11,000/- from the left pocket of the shirt of the petitioner. Vigilance P.S. Case No. 75/2008 was lodged on 01.10.2008 under

Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the "PC Act"). The trial is still pending

in the said case being Special Case No. 54/2008 in the court of learned Special Judge, Vigilance (Trap), Patna.

9. It is alleged that the petitioner had demanded a sum of Rs. 11,000/- to the said Sri Ram Rekha Prasad for nominating him on the post of Chairman,

Barharwa Kala East Primary Agricultural Cooperative Society Limited (PACS) under Block Harsidhi, East Champaran. It is the case of the petitioner

that the departmental proceeding against him was not conducted in accordance with Rule 17 of the Bihar Government Service (Classification, Control

and Appeal) Rules, 2005 (hereafter referred to as the "Service Rules"). The Inquiry Officer acted merely on the basis of the copy of the police

report and the petitioner's show cause. He came to a conclusion that for the present it was true that petitioner was caught while accepting bribe

but recorded that the final opinion would depend upon the outcome of the criminal case.

First and Second enquiry dealt together

10. The petitioner raised a grievance that the procedures required to be followed under the Service Rules were not followed. Neither the list of documents and witnesses were given to him nor any witness was examined. Even the documents sought to be made available by the petitioner were not made available to him. No opportunity of filing of written arguments/defence were given at the end of the departmental inquiry and no hearing was provided to the petitioner. The disciplinary authority had amalgamated suo motu the charges of the first departmental proceeding as well as the charges of the subsequent departmental proceeding and on 07.10.2013 issued second show cause notice disagreeing with the report of the Inquiry Officer relating to earlier charges no. 1, 2, 5, 6 & 7 and also with regard to the present charge.

Termination from Service

11. The petitioner submitted his second show cause on 17.01.2014. It is however his grievance that the then Principal Secretary, Department of Cooperative, who was the disciplinary authority, had made up his mind and decided to impose major penalty upon the petitioner by dismissing him from service. On 26.03.2014 the department issued an order imposing major penalties. Petitioner had been kept under suspension on 30.09.2008 till the date of his dismissal from service.

First Round of Litigation

12. The petitioner challenged the order of termination dated 26.03.2014 by filing a writ application being CWJC No. 19280/2015 which was finally heard by a learned Single Judge of this Court. This court had been pleased to quash the order of dismissal of the petitioner with liberty to the respondent authorities to proceed afresh from the stage of second show cause under Rule 18 of the "Service Rules". It is worth mentioning that during pendency of the writ application and much before disposal of the same, the petitioner had retired from service on 31.08.2016. However, this Court while exercising its extraordinary writ jurisdiction left it open for the authorities to proceed afresh against the petitioner from the stage of

Rule 18 of the Service Rules by complying with the procedures prescribed thereunder.

Submission on behalf of the Petitioner

13. Learned counsel for the petitioner has contended before this Court that while disposing of CWJC No. 19280/2015 this Honorable Court opined

that the pre-trap memorandum and post trap memorandum cannot by itself be considered to be evidence in respect of the charges and those cannot be

said to be the basis to conclude the petitioner's guilt arising out of his arrest. It is submitted that after passing of the order by the learned writ court

(Annexure 1 to the writ application), the respondents came out with letter no. 3000 dated 10.09.2018 (Annexure 2 to the writ

application) which was later on withdrawn and cancelled. It is said to be the second show cause notice and a bare reading of the same would show

that the second show cause notice was nothing but a verbatim reproduction of the earlier second show cause notice dated 07.10.2013 (Annexure

4 to the writ application). It is his submission that in the name of second show cause the disciplinary authority had done only an empty

formality.

14. Learned counsel for the petitioner has vehemently submitted that the second show cause notice (Annexure 2) had been issued in complete

disobedience and disregard to the order of this court passed in CWJC No. 19280/2015. It is pointed out from Annexure 2 that the respondents

reiterated that the pre trap memorandum and post trap memorandum proves the guilt of the petitioner. It is submitted that once the learned coordinate

Bench of this Court had expressly held that such documents could not form part of evidence and on that basis it cannot be concluded that the

petitioner is guilty of the charges, by reiterating the same stand in the second show cause the disciplinary authority had only acted in haste with a pre-

conceived mind to punish the petitioner.

15. It is further submitted that despite the liberty granted to the respondents to proceed under Rule 18 of the Service Rules, the

respondents chose not to proceed under the said Rule and eight months after receiving the reply of the petitioner to the second show cause (Annexure

- 12) they decided to covert the proceeding under the Bihar Pension Rules and finally passed the impugned order (Annexure 10 to the

I.A.) during pendency of the writ without following the established procedure of law.

16. Learned counsel submits that after the petitioner submitted his reply to the second show cause, after about eight months the respondent authorities

came out with the letter as contained in memo no. 2685 dated 25.07.2019 (Annexure 10 to the Interlocutory Application) by which they

converted the departmental proceeding under Rule 43(B) of Bihar Pension Rules. This was however done without following the procedure prescribed

under rule 139 of the Bihar Pension Rules. The petitioner once again replied to the letter contained in Memo No. 2685 dated 25.07.2019, refuting all

the charges. It is his submission that without giving opportunity of hearing, in complete haste the respondents came out with major punishment.

Learned counsel has relied upon the judgments of the Hon^{ble} Supreme Court as well as this Court which are as under:

1. (2005) 3 SCC 501 (Ram Dayal Rai Vs. Jharkhand State Electricity Board); 2017(1) PLJR 753 (Nandjee Mehta Vs. The State of Bihar &

Others); 2008(4) PLJR 21 (Dr. Ramavtar Prasad Vs. The State of Bihar & Others); 2019(3) BLJ 233 (Jhakhari Ram Vs. The State of Bihar &

Others) and unreported judgment passed in (1) CWJC No. 8338/2009 (Narmadeshwar Sharma Vs. The State of Bihar & Ors.) and (2) L.P.A. No.

131/2013 (The State of Bihar Vs. Narmadeshwar Sharma).

17. Learned counsel has relied upon the Judgment of the Hon^{ble} Supreme Court in the case of Roop Singh Negi Vs. Punjab National Bank &

Others reported in (2009) 2 SCC 570 to submit that the pre trap memorandum and post trap memorandum at the time of petitioner's arrest are yet

to be examined in the pending criminal proceedings, therefore, those document per se cannot be taken to be an evidence to impose a finding of

petitioner's guilt. What is the sanctity of such documents which are part of criminal investigation are to be tested in the light of the judgment of the

Hon^{ble} Apex Court in the case of Roop Singh Negi (supra).

18. Learned counsel has raised a jurisdictional issue against the disciplinary authority. It is his submission that in the second show cause dated

25.07.2019, the disciplinary authority admits at one stage that whether the money with which the petitioner was arrested was a bribe money would be decided in the criminal proceeding but in haste to punish the petitioner the disciplinary authority has in the garb of his/her "notes of disagreement" framed the fresh charges. It is, thus his submission that there being issues of jurisdictional error and violation of principles of natural justice, the same may be examined by this Court in its writ jurisdiction.

Stand of the Respondents

19. The respondents have come out with counter affidavit and supplementary counter affidavits. It is the stand of the respondents that in compliance of the order of this Court in the writ application, the second show cause notice was issued to the petitioner vide departmental memo no. 3000 dated 10.09.2018. Later on the said second show cause notice dated 10.09.2018 was rescinded and in the light of Hon'ble Court's order a fresh second show cause notice was again issued vide departmental memo no. 2685 dated 25.07.2019 by giving tentative notes of disagreement on the point of inquiry report under the provisions of Rule 18(2) of the Service Rules. Upon receipt of the second show cause the matter was examined and after seeking certain clarifications from the Registrar, Cooperative Societies, Bihar, Patna the matter has been examined thoroughly at the departmental level. It is the stand of the respondents that the petitioner has been found guilty of grave misconduct under Rule 43(B) of Bihar Pension Rules. In order to support the finding of grave misconduct it is stated that the petitioner has done illegal transaction of Rs. 11,000/- with one Sri Ram Rekha Prasad for which no justification has been given in the second show cause reply. Respondents submits that there is absolutely no illegality in the impugned order.

20. While answering the queries of this Court, the respondents have further stated that the second show cause is not a mere reiteration of the similar facts rather it contains various different facts which were not the part of the earlier show cause sought from the petitioner. The respondents have further submitted that the basic difference in the present show cause is that since the petitioner has superannuated on 31.08.2016, the present second

show cause was asked under Rule 43(B) of the Bihar Pension Rules, therefore, the present second show cause bearing memo no. 2685 dated

25.07.2019 was absolutely different from the second show cause which was earlier quashed vide judgment and order dated 10.04.2018 passed in

CWJC No. 19280/2015.

21. As regards the fixation of pension, it is submitted that the petitioner had submitted his pension paper wherein the Last Pay Certificate (LPC) has

been provided duly attested by the competent authority. In the said "LPC" the last pay of the petitioner has been shown at Rs. 27,794/-. It is

submitted that the same was forwarded to the office of Accountant General, Bihar, Patna vide letter no. 4015 dated 07.01.2019 for issuing authority

letter of pension. On the basis of pension paper submitted by the petitioner, the office of Accountant General has sanctioned pension vide authority

letter dated 11.11.2019. It is thus submitted that the role of the respondents department is limited and the office of Accountant General is the

competent authority to sanction the pension.

Consideration

22. This court has heard learned counsel for the petitioner and learned G.P.19 at length. In the writ application though the petitioner has discussed

briefly about the first departmental proceeding initiated against him in the year 2007, but in view of the subsequent developments, it seems after the

judgment of this court passed in CWJC No. 19280/2015, the respondents have proceeded against the petitioner in the matter of second departmental

inquiry initiated in the matter of Vigilance P.S. Case No. 75/2008 in which it is alleged that the petitioner was arrested by the Vigilance Investigation

Bureau while accepting the bribe of Rs. 11,000/- from one Sri Ram Rekha Prasad. In this respect vide departmental resolution no. 1101 dated

29.04.2009 the departmental proceeding was initiated against the petitioner. Initially the disciplinary authority passed the order of punishment

dismissing the petitioner from service. The said order of punishment as well as the order passed on the review petition filed by the petitioner before the

State Government both were under challenge in CWJC No. 19280/2015. The learned writ court agreed with the contention of learned Senior Counsel

for the petitioner that the two second show cause notices issued to the petitioner in respect of the two different departmental inquiries were in violation

of the statutory procedure laid down by Rule 18 of Service Rules. It was found that the show cause notices do not communicate any reason showing

disagreement with the inquiry officer and they were only reproducing the allegations which were enumerated in the two charge memos issued against

the petitioner.

23. The learned writ court examined the impugned order of punishments and the order passed on review and at one stage inter alia held as under:-

“..... The conclusions of the Enquiry Officer in respect of the second charge memo arising out of the vigilance case was that the final

decision in respect of petitioner’s guilt or innocence was not possible till conclusion of criminal proceedings against the petitioner. The review

authorities has also placed reliance on the pre trap memorandum and post trap memorandum which contained the charge of illegal gratification. This

Court would observe that the pre trap memorandum and the post trap memorandum at the time of petitioner’s arrest are issues which are yet to

be examined in the pending criminal proceedings arising out of Vigilance P.S. Case No. 75/2008 dated 01.10.2008. The same per se cannot be taken to

be the evidence to support the petitioner’s guilt in respect of the charges regarding which the criminal proceedings are yet to be decided. Apart

from this fact, this Court would also notice that there is no other evidence which has been relied upon by the review authorities.”

24. While setting aside the impugned order dated 26.03.2014 and quashing the order of punishment notified under the said order the learned writ court

in paragraph 22 of its judgment observed as under:-

“... ..It would be open to the authorities to proceed afresh against the petitioner from the stage of second show cause under Rule 18 of

Bihar CCA Rules by complying with the procedures prescribed therein.”

25. In the aforementioned background, this Court finds that after the decision of the learned writ court, initially the respondents issued memo no. 2998

dated 07.09.2018 by which the departmental notification as contained in memo no. 1379 dated 26.03.2014 was cancelled and decision was taken to

initiate the departmental proceeding, the respondents also issued departmental letter no. 3000 dated 10.09.2018 in the form of a second show cause notice. The petitioner replied to the said second show cause notice vide his letter no. 10 dated 28.11.2018, thereafter the disciplinary authority decided to recall/cancel the departmental letter no. 3000 dated 10.09.2018 and at this stage issued another letter bearing no. 2685 dated 25.07.2019. On the same date vide resolution contained in memo no. 2671 dated 25.07.2019 the department decided to convert the departmental proceeding against the petitioner as one under Rule 43(B) of the Bihar Pension Rules. A copy the letter bearing no. 2685 dated 25.07.2019 and the resolution bearing memo no. 2671 dated 25.07.2019 has been brought on record as Annexure A and Annexure C series with the supplementary counter affidavit dated 10.03.2021 filed on behalf of the respondents.

26. At this stage, having noticed that the learned writ court had granted liberty to the respondents to proceed under Rule 18 of the Service Rules, this court deems it just and proper to reproduce Rule 18 of the Service Rules hereunder :-

18. Action on the inquiry report (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in

the manner specified in sub-rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall

be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.â€

27. At this stage, this Court would reproduce the Prapatra â€™kaâ€™™ dated 16.04.2009 as under:-

29. The submission on behalf of the respondents is that because the petitioner had retired from service, therefore, the departmental inquiry was

converted in a proceeding under the Bihar Pension Rules. While this Court finds that normally with the retirement of the government employee the

pending departmental inquiry is liable to be converted in a proceeding under the Bihar Pension Rules, in the facts of the present case, the State

respondents failed to understand that the petitioner had attained the age of superannuation from service on 31.08.2016 when CWJC No. 19280/2015

was still pending. The learned writ court had while disposing of the writ application left it open to the authorities to proceed afresh against the

petitioner from the stage of second show cause under Rule 18 of Bihar CCA Rules by complying with the procedures prescribed thereunder. The

liberty granted to the respondent authorities were to proceed under the Bihar CCA Rules, therefore, there was no impediment on the way of the

respondent authorities in proceeding under the Bihar CCA Rules. Even though the petitioner had retired from service on 31.08.2016 by virtue of this

Court's order for purpose of the departmental proceeding he could have been deemed to be in service. The learned writ court was exercising

its power under Article 226 of the Constitution of India and in the pending proceeding if it was left open for the respondent authorities to proceed

under the Bihar CCA Rules, there was no reason as to why the respondent authorities would not have proceeded as per the order of learned writ

court. Moreover, they had already issued second show cause notice contained in memo no. 3000 dated 10.09.2018, the same was replied by the

petitioner but then the matter was kept pending for about another eight months and ultimately the said second show cause notice was withdrawn. The

respondents did not move the learned writ court for modification of the order dated 10.04.2018 and on their own chose to proceed under the Bihar

Pension Rules.

30. In the second show cause notice the disciplinary authority has briefly recorded the points of disagreement as under:-

31. It is evident from the materials on record that the charge against the petitioner was that of demanding of illegal gratification of Rs. 11,000/-, the

Inquiry Officer has submitted in his report that till conclusion of the judicial proceedings pending in the vigilance case in respect of the same charges, it

was not possible to arrive at a conclusion regarding the said allegation. In fact the learned writ court has also observed the same in the earlier writ

petition. This Court has quoted the relevant part thereof hereinabove. In the notice of disagreement the disciplinary authority has taken a view that the

Inquiry Officer has not considered that the petitioner was working as a District Cooperative Officer "cum" Assistant Registrar, Cooperative

Societies and he was caught red-handed in the trap led by the Vigilance Investigation Bureau and was arrested with a sum of Rs. 11,000/- which he

was accepting as a bribe. According to the disciplinary authority, the arrest of the petitioner by the Vigilance Investigation Bureau while accepting a

bribe and then his going to jail is not a good conduct befitting to the status of a government servant and this is against Rule 3(i)(ii)(iii) of Bihar

Government Service Conduct Rules, 1976.

32. In the same notes of disagreement, the disciplinary authority writes that whether the money with which the petitioner was arrested was a bribe

money or not is subject matter of trial in the vigilance court but the petitioner was arrested while accepting money from the complainant Sri Ram

Rekha Prasad with whom the petitioner had no official relationship and till that time the work of nomination of the Chairman in the Primary

Agricultural Credit Cooperative Societies Limited, Harsidhi Block in the East Champaran, Motihari was still pending.

33. According to the disciplinary authority the petitioner had not given any prior information about the personal transaction with said Sri Ram Rekha

Prasad and his receiving of Rs. 11,000/- from Sri Ram Rekha Prasad was against rule 17(5) and Rule 17(6) of the Bihar Government Servant

Conduct Rules.

34. From a bare reading of the notes of disagreement issued by the disciplinary authority, it is evident that the disciplinary authority has not at all

differed with the inquiry officer on his opinion that the delinquent employee/petitioner may be held guilty or be given a clean chit would depend upon the outcome of the criminal proceeding before the vigilance court.

35. What has been observed by the disciplinary authority raising her disagreement is something beyond the charge as per Prapatra "ka". In the

notes of disagreement, it is stated that the petitioner was arrested by the Vigilance Investigation Bureau while accepting bribe and he was sent to jail

which is not a good conduct and against the status of a government servant, but in the same notes of disagreement, the disciplinary authority states

that the money with which the petitioner was arrested and sent to jail whether that money is bribe money or not is subject matter of trial in the

vigilance court. Thus, the notes of agreement itself accepts that the charge of demanding illegal gratification was still not proved and there was no

material otherwise in the hand of the disciplinary authority to differ with the opinion of the Inquiry Officer in this regard.

36. The disciplinary authority has, in fact, proceeded to frame a fresh charge in the garb of the notes of disagreement by saying that the petitioner has

not provided any prior information to his controlling authority about any personal kind of transaction between him and Sri Ram Rekha Prasad,

therefore accepting a sum of Rs. 11,000/- from Sri Ram Rekha Prasad was against the Rule 17(5) & 17(6) of the Bihar Government Servant Conduct

Rules and this amounts to misuse of the position and extortion.

37. It is not in dispute that these were not the charge levelled against the petitioner. This Court is afraid that the disciplinary authority in his/her zeal to

punish the petitioner has given a go-bye to the established procedure of law and imposed the major punishment of forfeiture of 100% pension of the

petitioner. The learned writ court while disposing of CWJC No. 19280/2015 had gone on to record that the pre trap memorandum and post trap

memorandum at the time of petitioner's arrest were yet to be examined in the pending criminal proceeding and the same per se cannot be taken to

be the evidence to support the petitioner's guilt. The learned writ court further observed that there is no other evidence which has been relied

upon by the review authorities. In his/her notes of disagreement the disciplinary authority nowhere refers to any other material to take a view that the

money with which the petitioner was allegedly arrested was a bribe money. In fact, the disciplinary authority accepts that whether the money was a

bribe money or not is subject matter of trial in the pending criminal proceeding before the learned vigilance court. If it is so, then in the opinion of this

court, there was nothing before the disciplinary authority to take a different view from that of the Inquiry Officer. The Inquiry Officer has recorded a

finding that till conclusion of the pending judicial proceeding, it was not possible to arrive at a conclusion regarding the petitioner's guilt or

innocence.

38. In the opinion of this Court, the impugned order as contained in memo no. 2832 dated 10.08.2020 (Annexure ~12~ to the I.A.) cannot sustain

the test of law and is liable to be set aside. The impugned order is hereby set-aside. The disciplinary authority shall await the decision of learned

Special Judge, Vigilance in Special Case No. 54/2008. It will be open for the disciplinary authority to proceed to pass a fresh order in accordance with

law based on the said decision.

39. In the meantime, the provisional pension of the petitioner shall be restored. Consequential order to this effect shall be issued by the respondent

authorities within a period of six weeks from today.

40. Needless to say that the provisional pension shall be fixed taking into consideration the last pay scale attached to the post of District Cooperative

Officer applicable on the date of superannuation of the petitioner i.e. 31.08.2016. In order to give effect to this, if any correction is required in the last

pay certificate of the petitioner the required correction shall be carried out simultaneously within the aforesaid period of six weeks.

41. The claim of the petitioner for arrear of salary etc. for the period of suspension shall be considered by the disciplinary authority while passing

appropriate order after decision of the learned Special Judge, Vigilance Court, Patna in the pending criminal proceedings.

42. There will, however, be no order as to cost.

The Writ Application stands allowed to the extent indicated hereinabove.