

**(2023) 01 PAT CK 0026****Patna High Court****Case No:** Civil Writ Jurisdiction Case No. 20103 Of 2014

Nand Lal Thakur

APPELLANT

Vs

State Of Bihar

RESPONDENT

**Date of Decision:** Jan. 19, 2023**Acts Referred:**

- Constitution Of India, 1950 - Article 226
- Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 - Rule 17, 17(3), 17(4), 18

**Hon'ble Judges:** Prabhat Kumar Singh, J**Bench:** Single Bench**Advocate:** Gajendra Kumar Jha, Bam Bahadur Jha, Md. Raisul Haque, Krishna Kant Singh**Final Decision:** Allowed**Judgement**

1. This writ application, under Article 226 of the Constitution of India, has been filed for following reliefs:-

**"1. For quashing of order dated 14.07.2014 passed by the respondent Principal Secretary, communicated to the petitioner, vide Memo No. 3927 dated 16.7.2014 by the Directorate Prison and Correctional Services, contained in Annexure - 1, whereby and whereunder the appeal filed by the petitioner and others has been rejected.**

**2. For quashing of order of dismissal from service passed by the respondents/Inspector General, vide Memo no. 1335 dated 12.03.2014 as contained in Annexure - 8.**

**3. For directing the concerned respondents to reinstate the petitioner in service and extend him all consequential benefits thereof."**

2. Brief fact, as stated in the writ application, is that the petitioner was initially appointed on the post of 'Warder' and was posted in the District Jail, Hajipur. While the petitioner was posted at Mandal Jail, Hajipur, on 11.11.2011, an under-trial prisoner namely Mansoor Khan escaped from the jail, for which, an inquiry was conducted by A.I.G. (Prisons) Bihar, Patna and according to inquiry report dated 19.11.2011 conducted by him, petitioner alongwith three others namely Sri Vishwanath Ram, Sri Jagdish Sharma and Sri Shambhu Nath Das were found prima facie to be responsible for the said lapses and accordingly, a departmental inquiry was recommended against these four persons. Thereafter, vide order dated 21.06.2012, the conducting officer and presenting officer were appointed. The conducting officer submitted his report dated 07.01.2013 to the respondent no. 3/Inspector General stating therein that charges

against the petitioner, Vishwa Nath Ram and Shambhu Nath Das were proved, while the charge was not proved against Jagdish Sharma and he was exonerated from the departmental proceeding.

3. Thereafter, 2nd show cause notice dated 05.03.2013 was issued by the concerned respondent to the petitioner and other two persons alongwith inquiry report dated 07.01.2013 and petitioner filed reply to the 2nd show cause pointing out several irregularities and discrepancies in the inquiry report, but the same was not considered by the disciplinary authority and the Inspector General issued order of dismissal from service to the petitioner and other two persons, vide Memo No. 1335 dated 12.03.2014 (Annexure - 8), which was confirmed by the Appellate Authority, vide order dated 14.07.2014 (Annexure - 1). Both orders are under-challenge.

4. Learned counsel for the petitioner submits that none of the points, raised by the petitioner, has been considered by the Appellant Authority and in a mechanical manner, without following the due procedure prescribed under Rule 17 & 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as "C.C.A. Rules, 2005"), he confirmed the order of dismissal.

5. Learned counsel for the petitioner further submits that besides petitioner, two other persons namely Shambhu Nath Das and Vishwa Nath Ram were also dismissed from the service by the same impugned orders and against the order of appellant authority, one of the delinquent namely Shambhu Nath Dah filed a writ application before this Court, vide C.W.J.C. No. 12103 of 2014, which was considered by a coordinate Bench of this Court and vide judgment / order dated 08.05.2019, the writ application was allowed and order dated 12.03.2014 passed by Inspector General, Prison and Reforms Service, Government of Bihar, Patna (respondent no. 3) and order dated 14.07.2014 passed by the Appellant Authority / Principal Secretary, Department of Home, Govt. of Bihar were set-aside and the respondent authority was directed to grant all post retiral dues to the petitioner (Shambhu Nath Das) from the date of his retirement. Learned counsel for the petitioner submits that the case of petitioner is exactly similar to the case of said Shambhu Nath Das and as such, similar order may be passed in favour of petitioner also.

6. Learned counsel for the respondents, in reply however, submits that after following all the procedure laid down under the C.C.A. Rules, 2005, order of punishment and order of affirmation in appeal have been passed. However, in reply to the second contention of the petitioner that the case of the petitioner is similar to the case of Shambhu Nath Das, whose termination order has been held to be bad in law by this Court, vide order / judgment dated 08.05.2019 in C.W.J.C. No. 12103 of 2014, learned counsel for the respondent/State does not dispute the aforesaid contention.

7. In this case also, petitioner has questioned the impugned order of punishment on the following three grounds:

(i) Firstly, the Disciplinary Authority has not considered or had granted any opportunity to the delinquent to file written statement either denying or admitting the charges. In support of the same, he has placed reliance on a decision of this Court in the case of Rama Shankar Choudhary vs. State of Bihar, reported in 2018 (1) PLJR 91 and thus, the order of dismissal is in violation of provisions contained in Rule 17(3) and 17(4) of the C.C.A. Rules, 2005.

(ii) Secondly, the Enquiry Officer has held the charges to be proved on the basis of (a) enquiry report of A.I.G.(Prison), (b) enquiry report of Jailer dated 12.11.2011, (c) statement of escaped under-trial prisoner,

(d) U.T. Register dated 11.11.2011, and (e) statement of charge-sheeted employees. However, copies of said documents were never proved before the Enquiry Officer nor the same was supplied to the petitioner.

(iii) Lastly, he submits that the Enquiry Officer has held the petitioner guilty of charges on the basis of preliminary enquiry dated 19.11.2011 conducted by A.I.G. (Prisons) in which petitioner was prima facie found to be guilty of the conduct, but the said enquiry report was never served to the delinquent and without serving copy of the preliminary enquiry report, the disciplinary authority, placing reliance upon the same, has found the petitioner guilty, which is in complete violation of the law laid down by this Court in the case of Hari Sharan Thakur vs. State of Bihar & Ors., reported in 2008 (2) PLJR 49.

8. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds merit in the writ application and is of the opinion that petitioner's case is squarely covered by the case of Shambhu Nath Das (supra) and as such, petitioner is entitled for the same reliefs.

9. In view of aforesaid facts and circumstances as also law laid down by this Court in the afore-referred cases, the order dated 12.03.2014 passed by Inspector General Prison and Reforms Service, Government of Bihar, Patna (Annexure - 8) and order dated 14.07.2014 passed by the Appellate Authority i.e. Principal Secretary, Department of Home, Govt. of Bihar, communicated, vide Memo No. 3927 dated 16.7.2014 (Annexure- 1) are accordingly set aside with all consequential benefits.

10. Needless to say, the respondents shall be at liberty to initiate a fresh proceeding against the petitioner in accordance with law, if so advised.

11. With above observation and direction, the writ petition stands allowed.