

**(2025) 12 PAT CK 0072**

**Patna HC**

**Case No:** Civil Writ Jurisdiction Case No.10173 Of 2023

Dilendra Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision:** Dec. 4, 2025

**Acts Referred:**

- Bihar Pension Rules, 1950- Rule 43(b)

**Hon'ble Judges:** Partha Sarthy, J

**Bench:** Single Bench

**Advocate:** Chandra Kant, Sudhanshu Prakash, Navin Kumar, Srishti Kumari, Randhir Kumar, Raisul Haque

**Final Decision:** Allowed

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### **Judgement**

Partha Sarthy, J

1. Heard learned counsel for the parties.

2. The petitioner has filed the instant application praying for setting aside the order contained in Memo no. 1996 dated 26.5.2023 issued under the signature of the Deputy Secretary, Scheduled Castes and Scheduled Tribes Welfare Department, Government of Bihar imposing the punishment of deduction of 100% pension on the petitioner.

3. The relevant facts in brief are that while the petitioner was posted as the District Welfare Officer In-charge of District Arwal, he was proceeded against in a departmental proceeding with the memo of charge having been served on him on 28.4.2021. He submitted his reply.

4. In the meantime, the petitioner having retired from service on 31.12.2021, by order dated 28.3.2022 the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules. After conclusion of the inquiry, the Inquiry Officer submitted the inquiry report on 21.2.2023 finding all the charges to have been proved against the petitioner.

5. The petitioner was served with a copy of the inquiry report to which he submitted his reply. The respondent authority thereafter came out with the order of punishment contained in Memo no. 1996 dated 26.5.2023 issued under the signature of the Deputy Secretary, Scheduled Castes and Scheduled Tribes Welfare Department, Government of Bihar imposing the punishment of 100% deduction of pension on the petitioner. It is against this order that the petitioner has preferred the instant writ application.

6. It is submitted by learned counsel appearing for the petitioner that besides the petitioner having a good case on merits, so far as the inquiry report is concerned, which has been brought on record as Annexure-13 to the writ application, it is not in dispute that not a single witness was examined on behalf of the management. Further no document was proved by any witness and none was marked as an exhibit. Nevertheless, the Inquiry Officer having come to the conclusion that the charges levelled against the petitioner were proved is absolutely erroneous.

7. Learned counsel for the petitioner further submits that for the same set of allegations inquiry has been conducted against the petitioner on earlier occasion also and the petitioner was exonerated therein. The proceeding being one under Rule 43(b), it could not have been for an event which took place more than four years before the institution of the proceeding. It is also submitted that the order under Rule 43(b) should have been passed by the State Government or even after the amendment either by the Secretary or the Principal Secretary. It is a case of no evidence against the petitioner and as such, the order of punishment cannot be sustained. It is prayed that the order of punishment be set aside and the writ application be allowed.

8. The application is opposed by learned counsel appearing for the respondents. It is submitted that in terms of Rule 43(b), proceedings having been initiated prior to the retirement of the petitioner, there is no bar of the period of four years. It is further submitted that as per instructions received and being brought on record in the counter affidavit, copy of which has been served on learned counsel for the petitioner, it is the Secretary/Principal Secretary who has passed the order of punishment in the files, though it is the Deputy Secretary under whose signature the order impugned dated 26.5.2023 (Annexure-1) has been issued. It is submitted that there is no procedural irregularity in the proceedings carried out against the petitioner. The petitioner has not made out a case for interference in the order by the Court and as such, the writ application be

dismissed.

9. Heard learned counsel for the parties and perused the material on record.

10. The relevant facts in brief are that the petitioner was served with the memo of charge on 28.4.2021 and with the same the departmental proceeding commenced. The petitioner submitted his reply to the same before the Inquiry Officer.

11. It was during pendency of the departmental proceedings that the petitioner retired on 31.12.2021 whereafter the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules.

12. The Inquiry Officer submitted his inquiry report on 21.2.2023 (Annexure-14), a copy of which was served on the petitioner to which he filed his reply.

13. Thereafter, the respondents came out with the order of punishment contained in Memo no. 1996 dated 26.5.2023 under the signature of the Deputy Secretary, Scheduled Caste and Scheduled Tribes Welfare Department imposing the punishment of deduction of full pension to the tune of 100%.

14. Having perused the contents of the inquiry report, it transpires that the Inquiry Officer has taken into consideration the allegations levelled in the memo of charge, the documents/reports referred to in support of the allegations and the past conduct of the petitioner. On perusal of the inquiry report, it transpires that it is not in dispute that no witness has been examined in course of the inquiry. Consequently, none of the documents relied upon by the Inquiry Officer has either been proved by any person nor has the same been marked exhibit. Instead the Inquiry Officer has proceeded to shift the onus on the delinquent petitioner in not giving satisfactory reply in rebuttal to the charge levelled against him in the proceeding. The Inquiry Officer observes in the report that as the petitioner has not furnished documents in support of his defence, the allegations stand substantiated and proved against the petitioner.

15. The Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank & Ors.; (2009) 2 SCC 570 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.”*

16. Further a Division Bench of this Court in the case of Devendra Prasad vs. The State of Bihar & Ors. (judgment dated 19.10.2023 passed in LPA no.1302 of 2017), following Roop Singh Negi (supra) observed as follows :-

*“7. As has been held in Roop Singh Negi v. Punjab National Bank and others; (2009) 2 SCC 570, the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon'ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the Inquiry Officer functions in the status of a quasi-judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.”*

17. So far as the facts of the instant case is concerned, the inquiry report clearly not mentioning about the examination of any witness nor any of the documents relied upon by the Inquiry Officer having been proved by any witness nor marked an exhibit, in the opinion of the Court, the whole of the departmental proceeding was vitiated.

18. In the facts and circumstances of the case, the order of punishment contained in Memo no. 1996 dated 26.5.2023 (Annexure-1) issued under the signature of the Deputy Secretary, Scheduled Castes and Scheduled Tribes Welfare Department, Government of Bihar cannot be sustained and is set aside.

19. The writ application is allowed with all consequential benefits.