

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P(S) No. 4939 of 2016

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Ashok Prasad Sah, son of Late Ram Charan Sah, resident of Lane No:4, Anandgram, Morabadi, P.O.-Morabadi, P.S.-Bariatu, District-Ranchi

.....Petitioners

Versus

1. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Project Building, P.O. & P.S-Dhurwa, District- Ranchi
2. Secretary, Road Construction Department, Government of Jharkhand, Project Building, P.O. & P.S.-Dhurwa, District-Ranchi
3. Mr. Ehteshamul Haque (IAS, Retd.), father's name not known to the petitioner, Enquiry Officer, Town Administrative Building (Heavy Engineering Corporation), Gol Chakkar, Dhurwa, P.O. & P.S.-Dhurwa, District-Ranchi

...Respondents

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CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner(s) : Mr. A.K.Sahani, Advocate
For the Respondents : Mr. Mithilesh Singh, G.A.-IV

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43/25.11.2025

Heard learned counsel for the parties.

2. The instant writ application was initially preferred by the Petitioner for quashing and setting aside the Resolution issued under Memo no. 4973(S) WE dated 09.08.2016 (Annexure-8); whereby a proceeding was initiated under Rule 43(B) of Jharkhand Pension Rules, 1950.

3. During pendency of this writ application, the final order of punishment has been passed which has also been assailed in the present writ application, which is annexed as Annexure-25 to the amended writ application.

4. Briefly stated, the Petitioner joined as Assistant Engineer on 10.12.1980; thereafter he was promoted to the

post of Executive Engineer on 19.05.2000 and to the post of Superintending Engineer on 08.07.2014. Thereafter, the Petitioner was transferred to Rural Works Department as Superintending Engineer-cum-Chief Engineer (In-charge). Thereafter, on 23.10.2015 he was repatriated to Road Construction Department.

While he was working under Rural Works Department, a preliminary enquiry was sought by issuing a show cause on 02.12.2015 as to why a proceeding be not initiated. However, during the intervening period, the Petitioner superannuated from service on 31.01.2016.

Pursuant to his retirement, a show cause notice was issued to the petitioner under Rule 43(B) to which the petitioner duly replied. Thereafter, a charge-sheet was issued on 09.08.2016 (Annexure-8 to the amended writ application). Pursuant thereto, the Inquiry Officer and Presenting Officer were appointed and after enquiry proceedings, the reports were submitted to the Disciplinary Authority.

5. Pursuant thereto; a second show notice was issued to the petitioner on 13.01.2017. Thereafter, the petitioner replied to the 2nd show cause notice on 01.09.2017.

6. The fact further reveals that after getting reply to the 2nd show cause notice by the petitioner, the Disciplinary Authority again sought some more clarification from

Principal Secretary, Rural Development Department, copy of which was not sent to the petitioner; however, after getting reply from the Principal Secretary, Rural Development Department, a second 2nd show-cause notice was issued vide letter dated 13.06.2019 to which the petitioner replied on 26.08.2019 and the impugned order has been passed against the petitioner on 30.10.2019 (Annexure-25 to the amended writ petition).

7. The grievance of the petitioner is as follows:

(i) *No oral witness has been examined in this case which is against the dictum of Hon'ble Apex Court.*

In support of his contention, he relied upon the judgment of Hon'ble Apex Court rendered in the case of Satyendra Singh-Vs. State of Uttar Pradesh and Another¹

(ii) *There is no law in service jurisprudence for issuing second show-cause twice after asking information from 3rd party with regard to separate cause of action and after seeking document which was not part and parcel before the Inquiry Officer; as such, the reliance of such document which was not part and parcel before the Inquiry Officer cannot be relied upon;*

(iii) *In view of Rule 43(B)(C,) there is a stipulation that JPSC should have been asked for concurrence; otherwise the entire punishment order is vitiated.*

¹ 2024 SCC OnLine SC 3325

8. Apart from the other legal grounds, learned counsel for the Petitioner argues on merits of the case; inasmuch as, when the Disciplinary Authority was satisfied with reply to the second show-cause; but since he was pre-determined to impose punishment; therefore, the Disciplinary Authority again asked for certain documents and clarification from other department where the petitioner was posted earlier for some time which is not tenable in the eye of law.

9. Learned counsel for the Respondent-State opposes the prayer of the Petitioner and submits that though it is true that no oral witnesses have been examined, but it is also true that it was the Presenting Officer, who presented the documents and the case of the Petitioner was totally based on documents which was sent to him. Had the petitioner any grievance, he should have very well attended the enquiry proceeding and as a matter of fact for several occasions, the enquiry proceeding was adjourned and notices were issued to the Petitioner for attendance; however, the petitioner chose not to be present in the enquiry proceeding.

10. Learned counsel further submits that it is not strict law that there must be oral evidence. In this regard, he relied upon the judgment passed in the case of *State*

*Bank of India and another Vs. Narendra Kumar Pandey*² wherein at para-22, the Hon'ble Apex Court has held that in every circumstances oral evidence is not required.

11. He further submits that though the Disciplinary Authority has sought clarification from the other department, but the fact remains that after getting the information from the other department i.e., Rural Works Department, the Disciplinary Authority again issued second show-cause, that itself shows that principal of natural justice has been complied with; accordingly, on that score the punishment should not fail.

Learned counsel however admitted that there is no document in the entire counter affidavit to suggest that whether concurrence of JPSC was taken or not.

12. Having heard learned counsel for the parties and after going through the documents available on record, it appears that in the case of *Satyendra Singh (Supra)*, after analysing several judgments, the Hon'ble Apex Court has held that even in an ex parte inquiry, it is *sine qua non* to record the evidence of the witnesses for proving the charges. For brevity, Para-17 of the judgment passed in the case of *Satyendra Singh (Supra)* is extracted hereinbelow:

"17. Thus, even in an ex-parte inquiry, it is sine qua non to record the evidence of the witnesses for proving the charges. Having tested the facts of the case at hand on the touchstone of the Rules of 1999, and the law as expounded by this Court in the cases of Roop Singh Negils and Nirmala J. Jhala, we are of the firm view that the inquiry proceedings conducted against the appellant pertaining to charges punishable with

² (2013) 2 SCC 740

major penalty, were totally vitiated and non-est in the eyes of law since no oral evidence whatsoever was recorded by the department in support of the charges.”

13. Learned counsel for the Respondents has relied upon the judgment passed in the case of *Narendra Kumar Pandey (Supra)*, wherein the Hon’ble Apex Court at Para-22 has held that in an ex parte enquiry, if the charges are borne out from the documents kept in the normal course of business, no oral evidence is necessary to prove those charges.

With due regard to the aforesaid judgment, it is pertinent to mention here that the facts of the said case and the instant case are different. In the said case, all the documents were exhibited which is absent in the instant case. Moreover, the Hon’ble Apex Court in *Narendra Kumar Pandey (Supra)* has categorically held that if the charges are borne out from the documents kept in the normal course of business, no oral evidence is necessary to prove those charges.

However, after going through the enquiry report in the instant case, on the one hand, it appears that the documents were not exhibited and on the other hand it is not clear whether those documents were kept in a normal course of business.

14. As a matter of fact, in the case of *Roop Singh Negi Vs. Punjab National Bank and Others*³ the Hon'ble Apex Court has held in Paras 14 and 15 as under:

"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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

15. The same view was reiterated in the case of *State of Uttar Pradesh Vs. Saroj Kumar Sinha*⁴, wherein the Hon'ble Apex Court reiterated that the function of inquiry officer is to examine the evidence presented by the department and even in the absence of delinquent officer the inquiry officer has to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. The relevant paragraph of *Saroj Kumar Sinha* (Supra) is quoted hereinbelow:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be representative of the department/disciplinary authority/Government. His function is to examine the evidence

³ (2009) 2 SCC 570

⁴ (2010) 2 SCC 772

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.”

Emphasis Supplied.

So far as the case of *Narendra Kumar Pandey (Supra)*, which has been relied upon by the Respondents, has given a finding in para-22 on different background which is not present in the instant case; as such, on the ground of examination of witnesses; this issue goes in favour of the petitioner.

16. So far as the second argument of learned counsel for the Petitioner is concerned that after getting the reply to the second show cause notice, the Disciplinary Authority again asked clarification from the another department, where the Petitioner had worked for some time in order to be more accurate, is concerned; this Court is of the view that such action is alien to the service jurisprudence.

The basic procedure before imposing punishment, is of giving one show-cause notice while differing with the point of inquiry officer, if the case may be, and then give a second show cause notice for proposed punishment. But in this case, it is not the case that there was a difference of opinion between the Disciplinary Authority and the Inquiry Officer; as such, two stage of second show –cause notice was not required.

Interestingly, the order of punishment is largely based on the information gathered by the Disciplinary authority pursuant to the culmination of enquiry proceeding and also the same was also not part of the chargesheet, which is not permissible in the eye of law; as such, on this score also the State is not having a good case.

17. Even otherwise, admittedly as per Rule 43(B)(C), the JPSC should have been consulted before imposing punishment that also has not been done in the instant case, therefore this case is an example of non-compliance of natural justice & procedural irregularity coupled with the settled procedure of service jurisprudence.

Normally, in the case of procedural irregularities, the matter should be remitted to the disciplinary authority to proceed again from a particular stage; but in the instant case, as stated hereinabove, the petitioner has superannuated almost 10 years ago; as such, this Court is of the view that remitting the case to the respondents will further continue the legal battle against a senior citizen.

18. In view of the aforesaid finding, the impugned resolution issued under Memo No. 4973(S) WE dated 09.08.2016 (Annexure-8), is hereby, quashed and set aside.

19. The Respondents are hereby directed to give all consequential benefits. In other words, since the pension of

the petitioner has been reduced, the same shall be restored and after proper calculation, the entire amount of pension arrear after refixation of pension, shall be paid to the petitioner within a period of 12 weeks from the date of receipt/production of a copy of this order.

20. As a result, the instant writ application stands allowed in the manner indicted hereinabove. Pending I.A., if any, is also closed.

(Deepak Roshan, J.)

25th November, 2025
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