

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P. (S) No. 6841 of 2019**

Sushil Kumar Roy, aged about 59 years, son of Late Hriday Kumar Roy, resident of Flat No.D-404, Gokuldharm Apartment, Morabadi, P.O. & P.S.-Bariatu, Town and District-Ranchi.**Petitioner**

Versus

1. The State of Jharkhand through the Secretary /Principal Secretary, School Education and Literacy Department, having office at Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Town and District-Ranchi.
2. The Joint Secretary to the Government, School Education and Literacy Department, having office at Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Town and District-Ranchi.
3. The Conducting Officer-cum-Departmental Inquiry Officer, having its office near Golchakkar, Dhurwa, P.O. & P.S.-Dhurwa, Town and District-Ranchi.
4. The Regional Deputy Director of Education (RDDE), Ranchi-cum-Presenting Officer, having its office at Kali Babu Street, Near Kutchery, P.O.-G.P.O., P.S.-Kotwali, Town and District-Ranchi.**Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner(s) : M/s. Manoj Tandon, Shivani Bhardwaj,
Siddharth Ranjan, Karamjit Singh Chhabra,
Shubham Kumar, Advocates

For the Respondent(s) : Mr. Gaurav Raj, A.C. to AAG-II

18/Dated:-19.03.2026

1. Heard learned counsel for the parties.
2. The instant writ application has been preferred by the petitioner praying therein for the following reliefs:

- (i) *To quash and set aside the order, contained under the notification, issued by Memo No. 782 dated 13.08.2018 (Annexure-9), issued under the pen and signature of respondent No. 2, whereby and whereunder, three increments of the petitioner with cumulative effect have been withheld with a further direction that the petitioner was not given anything other than what has been paid as subsistence allowance, during the period of suspension.*
- (ii) *To also quash and set aside the review order, as contained in notification, issued by Memo No. 2485 dated 02.08.2019 (Annexure-11), whereby and whereunder, the review, preferred against the penalty order, has been rejected.*
- (iii) *To also quash and set aside the part of the inquiry report dated 14.03.2018 (Annexure-6), submitted by the respondent No. 3, whereby and whereunder, the charges of the petitioner have been found to be proved.*

3. Briefly stated, the petitioner was appointed in the State

Education Service on 20.09.1988 (Class-II Inspecting Branch) and was initially posted on the post of Area Education Officer and during the period 30.07.2007 to 31.12.2011, the petitioner was posted as District Education Officer, Sahibganj. The petitioner, thereafter, was transferred and posted as Secretary, Jharkhand Academic Council from January, 2012 to July, 2015. Thereafter, the petitioner was posted as Deputy Director, Higher Education, Government of Jharkhand.

4. While this petitioner was posted as Deputy Director, Higher Education Directorate, Higher and Technical Education, Government of Jharkhand, “*Charge*” was framed against the petitioner on 24.02.2016, which was issued by the resolution, contained in Memo No. 170 dated 25.02.2016 and the petitioner was put under suspension on the same day i.e. on 25.02.2016 by notification contained in Memo No. 169 dated 25.02.2016. Meanwhile, a notification dated 03.02.2016 was published in the Official Gazette governing the service condition of the petitioner.

5. Pursuant to the leveling of charges, the petitioner submitted his reply to each of the charges on 13.05.2016 before the Inquiry Officer. Another reply was submitted by the petitioner before the Conducting-cum-Departmental Inquiry Officer on 16.12.2016. The stand / opinion of the Presenting Officer was submitted in the light of the letter dated 18.01.2018 of the Inquiry Officer and the Presenting Officer submitted the stand of the Government by letter No. 30 dated 15.02.2018. The Inquiry Officer submitted inquiry report on 14.03.2018.

6. Thereafter, the second show cause notice was issued vide letter dated 25.04.2018. The petitioner submitted his reply to the second show cause notice on 23.05.2018.

7. Thereafter, the disciplinary authority by notification, contained in Memo No. 782 dated 13.08.2018, imposed penalty upon the petitioner. The petitioner aggrieved thereby, submitted review before the competent authority on 23.01.2019 and the said review of the petitioner was rejected by notification contained in Memo No. 2485 dated 02.08.2019.

8. Mr. Manoj Tandon, learned counsel for the petitioner amongst other grounds has assailed the impugned order on the ground that no oral witness has been examined in order to prove the charges levelled against him. He further referred to several judgments and submits that now, the law is no more *res integra* that the department, in order to prove the charges, has to adduce oral evidence and merely presenting of evidence will not suffice and oral evidence in order to prove the documents/charges is a condition precedent and, on this score, alone the impugned order may be set aside.

9. Learned counsel for the respondents though oppose the prayer of the petitioner to quash the impugned order, but fairly submits that after going through the inquiry report, there is no reference of any oral witness. He further could not dispute the fact that oral evidence is necessary in order to prove the document, save and except in the cases, where the documents are kept in ordinary course of business.

10. Having regard to the aforesaid facts and circumstances of the case and after going through the nature of charge and the inquiry proceeding, it clearly transpires that no oral evidence has been adduced in order to prove the document/charge against this petitioner. The issue of examination of oral witness has been dealt repeatedly by the Hon'ble Apex Court right from the case of **Roop Singh Negi**¹ and further reiterated in the case of **Saroj Kumar Sinha**². However, it has been seen in many cases that the authorities have not yet understood the importance of oral evidence.

11. In the case of **Satyendra Singh Vs. State of Uttar Pradesh and Another**³, the Hon'ble Apex Court has held as under:

“13. This Court in a catena of judgments has held that the recording of evidence in a disciplinary proceeding proposing charges of a major punishment is mandatory. Reference in this regard may be held to Roop Singh Negi v. Punjab National Bank⁹ and Nirmala J. Jhala v. State of Gujarat.¹⁰

14. In the case of Roop Singh Negi, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads 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

¹ (2009) 2 SCC 570

² (2010) 2 SCC 772

³ 2024 SCC OnLine SC 3325

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.

...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. **This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...**

(emphasis supplied)

15. Same view was reiterated in State of Uttar Pradesh v. Saroj Kumar Sinha, wherein, this Court held that even in an ex-parte inquiry, it is the duty of the Inquiry Officer to examine the evidence presented by the Department to find out whether the un rebutted evidence is sufficient to hold that the charges are proved. The relevant observations made in Saroj Kumar Sinha are as follows:—

“28. An inquiry 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 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.

....

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. **In other words, not a single witness has been examined in**

support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.”

(emphasis supplied)”

12. Recently, the same issue was raised before Hon’ble Apex Court in the case of **State of Uttar Pradesh through Principal Secretary, Department of Pachayati Raj, Lucknow Vs. Ram Prakash Singh**⁴ and the Hon’ble Apex Court after going through several of its previous judgment has reiterated the law as under:

“**13.** In *Roop Singh Negi v. Punjab National Bank*, it was held that an officer conducting an enquiry has a duty to arrive at findings in respect of the charges upon taking into consideration the materials brought on record by the parties. It has also been held therein that any evidence collected during investigation by an investigating officer against the accused by itself could not be treated to be evidence in the disciplinary proceedings.

14. What follows from a conjoint reading of the above two decisions is and what applies here is that, ‘materials brought on record by the parties’ (to which consideration in the enquiry ought to be confined) mean only such materials can be considered which are brought on record in a manner known to law. Such materials can then be considered legal evidence, which can be acted upon. Though the Indian Evidence Act, 1872 is not strictly applicable to departmental enquiries, which are not judicial proceedings, nevertheless, the principles flowing therefrom can be applied in specific cases. Evidence tendered by witnesses must be recorded in the presence of the delinquent employee, he should be given opportunity to cross-examine the witnesses and no document should be relied on by the prosecution without giving copy thereof to the delinquent - all these basic principles of fair play have their root in such Act. In such light, the documents referred to in the list of documents forming part of the annexures to the chargesheet, on which the department seeks to rely in the enquiry, cannot be treated as legal evidence worthy of forming the basis for a finding of guilt if the contents of such documents are not spoken to by persons competent to speak about them. A document does not prove itself. In the enquiry, therefore, the contents of the relied-on documents have to be proved by examining a witness having knowledge of the contents of such document and who can depose as regards its authenticity. In the present case, no such exercise was undertaken by producing any witness.

⁴ 2025 SCC OnLine SC 891

15. We may further refer to the decision of this Court in *State of Uttar Pradesh v. Saroj Kumar Sinha*¹⁷ where disciplinary proceedings were drawn up against the respondent, Saroj Kumar Sinha, under the 1999 Rules itself with which we are concerned. Paragraphs 26 to 30 and 33 of the said decision being relevant are quoted below:

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

‘7. (x) Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.’

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry 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 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.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

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 inquiry 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.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.”

(emphasis ours)

16. It appears that the appellant is yet to take lessons despite the admonition in Saroj Kumar Sinha (supra). The same kind of omissions and commissions that led to setting aside of the order of punishment imposed being upheld by this Court were repeated in the present case.”

13. Having regard to the above discussion, the instant writ application stands allowed and Memo No. 782 dated 13.08.2018 (Annexure-9), Memo No. 2485 dated 02.08.2019 (Annexure-11) and inquiry report dated 14.03.2018 (Annexure-6), are hereby, quashed and set aside.

14. It has been informed that the petitioner has already retired on 31.12.2019; as such, though in normal circumstances, the matters are remitted in the case of procedural irregularities, but since the petitioner has already retired 7 years ago; as such, no fruitful purpose would be served by remitting the case for fresh inquiry and accordingly, the petitioner is entitled for all

consequential benefits including revision of pension. The payment of entire monetary benefits including the revision of pension shall be done within a period of 12 weeks from the date of receipt of copy of this order.

15. Pending I.A., if any, also stands closed.

(Deepak Roshan, J.)

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