

(2021) 02 JH CK 0036
In the Jharkhand High Court
Case No : Writ Petition(S) No. 7654 Of 2011

Arvind Kumar Sinha

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-02-2021

Acts Referred:

Jharkhand Service Code, 2001 — Rule 99, 100
Bihar/Jharkhand Pension Rules, 2000 — Rule 43(b)

Citation : (2021) 02 JH CK 0036

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : A.K.Sahani, Rahul Saboo

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties through V.C.
2. The instant writ application has been preferred by the petitioner praying therein for quashing and setting aside the order of punishment as contained in Memo No. 5768 dated 20.09.2011 issued by the respondent No.3 (Annexure-9), whereby three punishments have been imposed upon the petitioner
i.e. withholding of three annual increments with cumulative effect, withholding of regular promotion till pendency of Vigilance Case and withholding of salary for the period from the date of suspension till the date of punishment order.
The petitioner has further prayed for quashing the appellate order dated 31.05.2018 (Annexure-14), whereby the appeal of the petitioner has been summarily rejected without assigning any reason.
3. The relevant facts necessary for disposal of the instant writ application is that

the petitioner was initially appointed on the post of Junior Engineer in the Irrigation Department and in due course he was also granted benefit of 1st and 2nd time-bound promotion. After bifurcation, he was posted as Junior Engineer in Rural Development Special Division, Lohardaga. While the petitioner was in service; on the basis of a complaint made by Verma Oraon, the Superintendent of Police, Vigilance Bureau, Ranchi directed the concerned authority to verify and report and subsequently, a Vigilance Case being Vigilance P.S. Case No. 18 of 2008 was also registered on 27.09.2008. As a result, the petitioner was suspended under Rule 99 of the Jharkhand Service Code in view of his jail custody. However, when he was released on bail on 04.12.2009; he submitted his joining. However, vide an office order dated 17.03.2010; the government again suspended the petitioner under Rule 100 of the Jharkhand Service Code in contemplation of a departmental proceeding and a chargesheet was also issued to which the petitioner duly replied and finally a provisional punishment has been imposed vide order dated 20.09.2011.

4. Mr. Sahini, learned counsel for the petitioner assails the impugned order on following grounds:-

- (a) There is no provision of provisional punishment in service jurisprudence;
- (b) The nature of punishment is admittedly a major punishment; as such, the respondents were duty bound to issue second show cause notice and after receiving the reply, should have passed the order of punishment and in the instant case, no second show cause notice has been served to the petitioner before imposing the punishment;
- (c) By going through the impugned orders it would transpire that no reason has been assigned either by the disciplinary authority or by the appellate authority;
- (d) When the petitioner has been acquitted in the Vigilance Case which was the basis of the charge sheet / departmental proceedings; his appeal should have been entertained.

5. Relying upon the aforesaid facts/contentions, learned counsel submits that both the impugned orders deserve to be quashed and set aside as there is procedural irregularity; apart from the fact that the basis of charge was on a complaint petition and the petitioner has already been acquitted in the said

criminal case.

6. Mr. Rahul Saboo, learned counsel for the respondent-State submits that the punishment has been passed after due procedure and the petitioner was

first issued a charge-sheet and thereafter, an enquiry was conducted and finally the order of punishment has been passed. He further submits that

though the reason given in the impugned order of punishment is not detailed, however, it cannot be said that it is a non-speaking order. However, Mr.

Saboo could not defend the appellate order which has been communicated to the petitioner on 31.05.2018; which is completely non-speaking and non-

reasoned order.

7. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective

affidavits; it clearly transpires by going through the impugned order of punishment that the disciplinary authority has treated this order as a provisional

order. It further transpires from the nature of punishment that it is a major punishment and admittedly; no second show cause notice has been served

upon the petitioner which is mandatory requirement of law. It further transpires by going through the impugned order of punishment that no

independent mind has been applied by the disciplinary authority; rather the punishment has been imposed on the opinion of the Advocate General.

Therefore, there won't be any exoneration in treating this order as non-reasoned and non-speaking order. Further from the order impugned itself it

clearly transpires that the promotion was with held up till decision of the criminal case which was pending before the competent criminal court. As

such, the moment the petitioner was acquitted and filed representation before the appellate authority; he was duty bound to take a decision by giving a

speaking order, but from the appellate order it clearly transpires that it is completely non-speaking and non-reasoned order. Even otherwise, the basis

of charge i.e. the complaint made by the one Verma Oraon, whereby Vigilance case was instituted and the petitioner was sent in custody and he was

suspended and in connection with the said case itself the departmental proceeding was initiated; the petitioner has been acquitted in the criminal case

and the State has not challenged that decision; therefore, the very basis of charge does not subsist.

8. In view of the aforesaid findings the impugned order of punishment as

contained in Memo No. 5768 dated 20.09.2011 and also the order in appeal as contained in order dated 31.05.2018 is quashed and set aside. It is pertinent to state that normally in these type of cases, the matter should be remitted back to the disciplinary authority to start a fresh proceeding from the stage of supply of show cause notice, however, since the petitioner has already retired on 30.09.2014; as such, no fruitful purpose would be served in remitting the case back to the disciplinary authority because of the obvious reason that the cause of action is certainly beyond the period of four years and as per proviso to Rule 43 (b) of Bihar/Jharkhand Pension Rules; the same is not permissible.

9. As a result, the instant writ application is allowed. The respondents are directed to pass a necessary order for extending the consequential benefits to the petitioner within a period of four months from the date of receipt/production of copy of this order and pay the accumulated dues within a further period of six weeks.