

(2025) 08 JH CK 0796
In the Jharkhand High Court
Case No : W.P. (S) No. 986 Of 2015

Braj Shankar Prasad Sinha

APPELLANT

Vs

State Of Jharkhand through the Chief Secretary

RESPONDENT

Date of Decision : 11-08-2025

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 55

Citation : (2025) 08 JH CK 0796

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Sahil, Hemant Kr. Gupta

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Heard learned counsels for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for quashing the resolution issued vide memo No. 413/Ranchi dated 15.01.2014 by the Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, issued pursuant to the order of Hon'ble Governor, Jharkhand, whereby and whereunder, the petitioner has been compulsorily retired and 30% amount has also been deducted from his pension under Section 49 (IV-a) of Civil Services (Classification, Control and Appeal) Rules.

The petitioner has further prayed for quashing the appellate order dated 27.10.2014, issued under the signature of Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, whereby and whereunder, the appeal filed by the petitioner against the punishment order dated 15.01.2014 has been rejected.

3. The brief facts as per the pleadings are that the petitioner was primarily

inducted in service of Bihar Government as Stenographer Class-1 in Patna Secretariat on 10.04.1973. Thereafter, the petitioner was selected for administrative service of Bihar through Bihar Public Service Commission in a nomination quota on the ground of meritorious service on 16.07.1991 and appointed as Deputy Collector at Arah (Bhojpur) on 16.07.1991.

In the year 2007, when he was posted as Circle Officer in Shikari Para Block and was in additional charge of Circle Officer of Raneshwar Block, then vide Letter No.495 dated 17.08.2007 of Commissioner, Santhal Pargana Division, Dumka, a memo of charge contained in Form-D was issued against the petitioner through Letter No.3723/jkn dated 08.11.2007 of Secretary, Department of Finance and Land Reforms, Jharkhand and vide departmental Letter No.8216 dated 18.12.2007 explanation was sought from him.

The memo of charges (Annexure-1) issued against the petitioner was containing 22 points against which the petitioner submitted his explanation vide letter no. 16 dated 04.01.2008 (Annexure-2) denying the charges levelled against him.

Thereafter, second show cause was issued to the petitioner vide Letter No. 9798 dated 07.10.2013 (Annexure-3). Again, the petitioner replied to the second show cause stating that the conducting officer invited his explanation and on that Deputy Commissioner, Dumka was given time till 09.04.2013 to submit opinion. On non-submission of the opinion, conducting officer announced the departmental proceeding to come to end, but on submission of report by Deputy Commissioner beyond the stipulated period i.e. on 16.04.2013, without giving copy of that report to the petitioner or discussing with the petitioner, he submitted the enquiry report. It has also been stated in his show cause reply that he was not given the chance to cross-examine the witnesses, nor he was given opportunity to produce the documentary evidence which is illegal and against the principles of natural justice.

Thereafter, vide resolution issued vide memo No. 413/Ranchi dated 15.01.2014 (Annexure-5); pursuant to the order of Hon'ble Governor, Jharkhand, the petitioner has been compulsorily retired and 30% amount has also been deducted from his pension under Section 49 (IV-a) of Civil Services (Classification, Control and Appeal) Rules.

Thereafter, the petitioner filed appeal before the Hon'ble Governor, Jharkhand under the provision of Civil Services (Classification, Control and Appeal) Rules which was also dismissed vide order dated 27.10.2014 (Annexure-7) and the punishment order dated 15.01.2014 has been sustained.

4. Learned counsel for the petitioner submits that apart from merits of the case, there are certain procedural irregularities which vitiated the entire departmental proceeding. He further submits that in the instant application, the petitioner was not given any opportunity to produce documentary evidence and cross-examine the witnesses. Though, as per Rule 55 of Civil Services (Classification, Control and Appeal) Rules, no order of dismissal, removal/compulsory retirement shall

be passed on a member of service unless he has been informed in writing.

He further submits that in the instant case, he has specifically requested the inquiry officer to cross examine the witnesses which is evident from Annexure-4; relevant paragraph at page 59 of the amended writ application, which clearly indicates that the petitioner has specifically requested the I.O. to cross-examine the witnesses, but the I.O. has not given any opportunity to cross-examine the witnesses.

He further submits that none of the documents has been proved in the inquiry proceedings, inasmuch as, the same was not proved by any witnesses which is against the law laid down in the case of *Roop Singh Negi v. Punjab National Bank* (2009) 2 SCC 570 and *State of U.P. v. Saroj Kumar Sinha* (2010) 2 SCC 772 as such, the impugned order should be quashed and set aside.

Before concluding, he lastly submits that since the petitioner has retired in the year 2014 itself; as such, after quashing of the impugned order, the consequential benefits may be directed to be paid to this petitioner.

5. Learned counsel for the respondents opposed the prayer of the petitioner and submits that there is no procedural irregularity and the petitioner has committed the offence as alleged in the charge-sheet which was duly proved by the inquiry officer; as such, no interference is required.

6. Having heard learned counsels for the parties and after going through the documents available on record and the averments made in the respective affidavits, it appears that in para-33 of the amended writ application, petitioner has alleged against the then Director, National Planning Programme, Dumka, who was also Incharge of the inquiry team. Further in para 34, the petitioner has taken specific stand that petitioner has not been given proper opportunity to produce the documentary evidence and cross-examine the witnesses. However, the same is replied in the counter affidavit of the respondents in para 50 and after perusing the reply, it is evident that the same is vague and does not deliberate the contention of the petitioner. For brevity, Para-33 & 34 of the Writ Application is extracted hereinbelow:

"33. That it is stated and submitted that, in fact, the petitioner was charged on the basis of malicious report of the then Director, National Planning Program, Dumka, who was in-charge of enquiry team and was annoyed with petitioner as he was not properly given hospitality by the petitioner, since petitioner was busy in flood relief.

34. That it is stated and submitted that the petitioner has not been given proper opportunity to produce the documentary evidence and cross examine the witnesses though as per Rule 55 of Civil Services (Classification, Control and Appeal) Rules, no order of dismissal, removal, compulsory retirement shall be passed on a member of service unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an

adequate opportunity of defending himself.”

Further, Para 50 of the Counter affidavit dated 08.07.2024 is extracted hereinbelow:

“50. That the statement made in paragraph no. 34 & 35 of the writ petition is totally misconceived hence denied and it is most humbly stated and submitted that the entire departmental proceeding against the petitioner has been conducted in terms of law whereby fair opportunity of hearing was given to the petitioner to defend his case. The petitioner was thereafter served with the second show cause which contains the details of the penalty to be imposed upon the petitioner. It is further submitted that there is no violation of Rule 55 of Civil Services (Classification, Control and Appeal) Rules.”

7. From record, it further transpires that the petitioner has requested time and again to the inquiry officer to call for records in original and examine the witnesses on the basis of which charges were framed against him, but the inquiry officer concluded the inquiry in haste without calling for the records in original or examining the witnesses and also opportunity was not given to the petitioner to cross-examine the witnesses.

This specific averment has been replied by the respondents in para-52 wherein they have not given any specific reply; rather they said that the departmental proceeding awarding the punishment is neither illegal nor unsustainable. For brevity para 52 of the counter affidavit is extracted hereinbelow:

“52. That with respect to statement made in paragraph no. 37 of the writ petition it is most humbly stated and submitted the petitioner has been provided ample opportunity of hearing during the departmental proceeding, the averments made in these paragraph is to be proved by the petitioner himself. However it is submitted that the petitioner has in no manner been prejudiced in the departmental proceeding on ground of non supply of documents.”

8. The purpose of referring the specific stand of both the parties is to ascertain as to the allegation of the petitioner and the veracity of the inquiry proceeding. In crux, the grievance of the petitioner is that during the course of inquiry proceeding, he had specifically requested the inquiry officer to cross-examine the witnesses and further, even in the reply to the second show cause notice, he has specifically contended that the inquiry officer has not given a chance to the delinquent to cross-examine the departmental witnesses, but unfortunately, the disciplinary authority has not given any consideration with regard to the said objection.

9. As a matter of fact, in the entire inquiry proceeding, it does not transpire that the documents, which have been relied upon by the respondents, have ever been proved as per the law laid down by the Hon’ble Apex Court in the case of Roop Singh Negi (supra) and Saroj Kumar Sinha (supra). The law as laid down is very clear that mere submission of documents will not suffice the purpose and it has

to be proved by oral evidence. Same law has been reiterated in the case of Saroj Kumar Sinha. For brevity, para 14 of Roop Singh Negi (supra) is extracted hereinbelow:

"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."

Further in para 28 of Saroj Kumar Sinha (supra) Hon'ble Apex Court held as under:

"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 unrebutted 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."

10. After going through the inquiry report, it appears that the documents have not been proved by any oral evidence, rather no witnesses have been examined on behalf of the respondents in order to prove the charge. Thus, in crux, it appears that the entire allegations have been proved on the basis of the report of the Deputy Commissioner, but none of the witnesses were there to prove the charge; as such, it cannot be deemed to be proved.

11. It further appears from para-25 of the amended writ application that the petitioner has specifically stated that after petitioner filed his reply to the second show cause and the Deputy Commissioner, Dumka was given time till 09.04.2013 to submit his opinion; on non-submission of the opinion, the conducting officer closed the departmental proceeding. However, the Deputy Commissioner submitted his report beyond the stipulated time that too without giving copy of the report to the petitioner and thus, the petitioner was not given opportunity to produce documentary evidence, nor he was allowed to cross-examine the witnesses.

12. In view of the aforesaid facts and circumstances of the case the instant writ application stands allowed and resolution issued vide memo No. 413/Ranchi dated 15.01.2014, is hereby, quashed and set aside. Further, the appellate order dated 27.10.2014; whereby the appeal of the petitioner has been dismissed against the punishment order, is also quashed and set aside.

13. Normally, in such type of cases; where there is procedural irregularity, the matter should have been remitted to the start the proceedings afresh from the stage, where there was irregularity; but in the instant case, the Petitioner has superannuated in the years 2014 itself; as such, no fruitful purpose would be satisfied in remitting the case to the Inquiry Officer at this belated stage when the Petitioner is now more than 70 years.

Accordingly, the Respondents are directed to give all consequential benefits to the petitioner within a period of six weeks from the date of receipt/production of copy of this order.

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