

(2002) 09 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4307 of 2001

Brij Kishore Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Bihar (Now Jharkhand) Pension Rules, 1950 — Rule 43
Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 226

Citation : (2002) 09 JH CK 0075

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

**Advocate : S.B. Gadodia, B.P. Mishra and Sumeet Gadodia, for the Appellant;
None, for the Respondent**

Judgement

S.J. Mukhopadhaya, J.—The petitioner was in the services of the State in its Road Construction Deptt. While posted as Junior Engineer at Barhi he was asked to submit explanation relating to certain allegation by Joint Secretary (Vigilance) vide letter No. 3102 (S), dated 17th May, 1994. The petitioner having denied the allegation, the Engineer-in-Chief-cum-Special Secretary, Road Construction Deptt., Patna vide order No. 367, dated 28th October, 1994 initiated- a departmental proceeding. The petitioner submitted reply on 28th of February, 1995 and requested to exonerate him from the charges. Thereafter, the respondent-Engineer-in-Chief-cum-Special Secretary, Road Construction Department vide order No. 418, dated 11th October, 2000 imposed punishment of censure to be recorded in character roll for the year 1991-92, stop page of one annual increment with cumulative effect, stoppage of promotion for three years with further direction to recover a sum of Rs. 2,54,279.75 (Rs. Two lakhs fifty four thousands two hundreds seventy nine and seventy five paise) proportionally from the petitioner. The order of punishment dated 11th October, 2000 was modified vide order No. 303, dated 28th July, 2001 issued by Engineer-in-Chief-cum- Special Secretary, Road Construction Deptt., Patna wherein in place of

recovery of Rs. 2,54,279.75 (Rs. Two lakhs fifty four thousands two hundreds seventy nine and seventy five paise) it was ordered to read recovery of Rs. 23,110.75 (Rs. Twenty three thousand one hundred ten and seventy five paise).

2. From the pleadings made by petitioner and counter-affidavit filed by respondents it is evident that though the proceeding was initiated under Rule 55 of the Civil Services (CCA) Rules, 1930 but no day- to-day enquiry was made. There is nothing on the record to suggest that any enquiry report was submitted by the enquiry officer. On the other hand, it appears that the order No. 418, dated 11th October, 2000 was issued on the basis of a letter of Cabinet (Vigilance) Department No. 4178 dated 27th August, 1993.

3. It appears that similar action was taken against other Engineers who were posted as Executive Engineer, etc. in their case this Court vide order dated 26th February, 2001 in CWJC No. 70/2001 and analogous cases set aside the similar orders of punishment having passed in violation of rules of natural justice.

4. In the facts and circumstances, as no day-to-day proceeding have been conducted and the order of punishment was passed without taking into consideration any enquiry report, the punishment, order No. 418, dated 11th October, 2000 as modified vide order No. 303. dated 28th July, 2002 is set aside with liberty to respondents to proceed further, if they so chose, in accordance with law for the purpose of Rule 43(b) of the Bihar (now Jharkhand) Pension Rules, 1950 (now 2000).

5. The petitioner having retired from service on 31st January, 2002, the respondents are directed to release and pay the provisional pension/gratuity full leave encashment, provident fund amounts, etc. within three months from the date of receipt/production of copy of this order, if not yet released.

6. If the respondents failed to proceed further and do not pass any order under Rule 43(b) of the Pension Rules, 1950 within six months from the date of receipt/production of the copy of this order, they will pay the rest of pension and gratuity after finalisation.

7. The writ petition stands disposed of with aforesaid observations and directions.