

**(2013) 01 JH CK 0179**  
**In the Jharkhand High Court**  
**Case No : WP (S) No. 7241 of 2006**

Indra Deo Gope

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 23-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** (2013) 2 JLJR 434

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Rajiv Sinha, Bhupol Krishna Pd. and Rohit Sinha, for the Appellant;  
Purnendu Sharan, for the Respondent

**Final Decision :** Allowed

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## Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The writ petitioner is aggrieved by the order contained at Annexure-1 dated 21.1.2002 passed in Departmental Proceeding No. 12/1999, whereby he has been awarded punishment of stoppage of two annual increment equivalent to three black marks, which is a major punishment under Rule 828 read with Rule 852 of the Bihar (now Jharkhand) Police Manual.

2. The ground for challenge of the said order of punishment is that he was not served with a charge-sheet before initiation of the proceeding and the impugned order of punishment has been passed without service of enquiry report alongwith the second show-cause.

3. The petitioner has also assailed the appellate order contained at Annexure-4 vide memo no. 566 dated 16th April, 2004, whereby his appeal has been dismissed as time barred. According to the petitioner, the appeal was well within the limitation of six months from the date of receipt of the order of punishment on 5th September, 2003 and, as such, the appellate order itself is also unjustified on the ground on which it has been rejected as time barred.

4. The petitioner was posted as Sub-Inspector, Jamua in the year 1999. A departmental proceeding was initiated against him for charges of cutting a Gamhar tree standing on the Government land in village Podeya with the help of certain villagers while he was posted at Jamua Police Station under Giridih District. It has been submitted on behalf of the petitioner that in the Departmental Proceeding No. 12/1999 the charge-sheet was never served upon him.

5. The respondents were allowed time to give specific reply to the said assertion and in their second counter affidavit filed on 8th June, 2012 at paragraph-5 it has been stated that the show-cause notice dated 25.1.1999 was handed over to special messenger for service on the petitioner on 28.1.1999. However, no receipt signed by the petitioner of service of show-cause notice is available on record in dispatch. It further appears that the petitioner subsequently participated during the course of the departmental proceeding and also cross-examined five witnesses as would appear from the proceedings of the departmental proceeding brought on record in the second counter affidavit.

6. The petitioner has also made out a case that no second show-cause notice including the enquiry report submitted by the enquiry officer was served upon him before passing of order of punishment by disciplinary authority imposing punishment. This fact has also not been disputed by the respondents in the statements made in the counter affidavit. Counsel for the petitioner has, therefore, assailed the impugned order of punishment by disciplinary authority as being violative of principle of natural justice and also failing to follow the procedure prescribed under the law in relation to conduct of departmental proceeding against a public servant as required under the provisions of Article 311 of the Constitution of India. It is further submitted that the statement contained in paragraph-10 that the petitioner has received the order of punishment on 5th September, 2003 and the appeal was preferred on 25th February, 2004 within six months period as provided under Rule 852 of the Bihar (now Jharkhand) Police Manual, has also not been specifically refuted in the statements made in the counter affidavit, although the appeal has been rejected on the ground of being time barred. The petitioner has retired in April, 2012.

7. I have heard learned counsel for the parties at length and gone through the materials on record. The allegation of the petitioner that he was not served the charge-sheet before initiation of the Departmental Proceeding No. 12/1999 has not been refuted by the respondents. Although they have filed two counter affidavits, but no receipt was available on record in the dispatch. The petitioner participated in the departmental proceeding thereafter by cross-examining some of the witnesses, but in absence of service of charge-sheet it cannot be said that he was accorded proper opportunity to defend himself from the alleged charges which is an essential requirement of principle of natural justice. The petitioner had to meet the charges in his defence for which he was required to know the allegations made upon him as alleged in the charge-sheet. It further appears

that the order of punishment is in the nature of major punishment in terms of Rule 828 read with Rule 852 of the Jharkhand Police Manual and, therefore, the requirement of issuance of second show-cause notice enclosing the copy of the enquiry report is also a sine qua non, as held by the judgment of Hon"ble Supreme Court in the case of Md. Ramzan Khan reported in AIR 1994 SC 1074 which has been constantly followed thereafter. The order of punishment, therefore, has been passed without following the aforesaid procedure and in contravention of the settled legal position in conduct of departmental proceeding in respect of a public servant as required under Article 311 of the Constitution of India. It further appears that the appellate order has been passed holding the appeal as time barred, although the contentions of the petitioner that he had received the punishment order only on 5th September, 2003 and had preferred the appeal within six months period on 25th February, 2004 has not been categorically refuted either. The memo of appeal contained at Annexure-3 also refers the aforesaid facts and in the wake of which the dismissal of the appeal as been lime barred also appears to be unsustainable on facts.

8. In the totality of the circumstances and the reasons recorded hereinabove, the impugned order of punishment dated 21.1.2002 and the appellate order dated 16th April, 2004 cannot be sustained in the eye of law and is, accordingly, quashed. This writ petition stands allowed.