

(2010) 10 JH CK 0021
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4464 of 2010

Mahabir Singh

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

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

Citation : (2011) 1 JCR 413

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The Petitioner, a member of the Jharkhand Administrative Service, while was posted as Block Development Officer, Topchanchi (Dhanbad), an ex-Member of the Legislative Assembly lodged a complaint against him before the Deputy Commissioner, Dhanbad regarding irregularities being committed in the implementation of the schemes namely, Indira Awas Yojna, Din Dayal Awas Yojna etc. The then Deputy Commissioner, Dhanbad on getting the complaint got the matter enquired into by the Additional District Magistrate (Law and Order, Dhanbad), who found the allegations prima facie to be true. Thereupon, an explanation was sought on the aforesaid allegations from the Petitioner, who submitted his explanation but that was not found to be satisfactory and hence, the Deputy Commissioner, Dhanbad made recommendation to initiate a departmental proceeding against the Petitioner. Thereupon, the Government vide its resolution No. 4186 dated 9.8.2006 decided to initiate a departmental proceeding against the Petitioner under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules whereby the Commissioner, South Chhotanagpur Division, Ranchi was appointed as Conducting Officer, who after conducting enquiry found the Petitioner guilty of the charge of selecting persons for allotment of the houses under Din Dayal Yojna, though they were not eligible to get the houses under the said scheme. The Disciplinary Authority on being

satisfied with the report awarded following punishments, vide its resolution No. 3154 dated 29.5.2010.

(i) Two increments were stopped with cumulative effect.

(ii) Petitioner was debarred from promotion for next two years from the due date.

The said order as contained in notification/memo No. 3154 dated 29.5.2010 (Annexure 10) has been sought to be quashed on the ground that the said punishment of stoppage of two increments with cumulative effect being major punishment cannot be inflicted without serving copy of the enquiry report and without giving any opportunity to have his say in the matter relating to the punishment.

2. Mr. R. Krishna, learned Counsel appearing for the Petitioner by referring decision rendered in a case of Kulwant Singh Gill Vs. State of Punjab, and in the case of Rang Nath Rai and Ors. v. State of Bihar 1997 (2) PLJR 421. submitted that in view of the stoppage of two increments with cumulative effect being a major punishment one cannot be inflicted with such punishment without giving second show cause notice or in other words without giving opportunity to the Petitioner of his say in the matter and hence, the said order being quite illegal is fit to be set aside.

3 A counter affidavit has been filed wherein by referring Rule 168 of the Board of Miscellaneous Rules, it has been pleaded that stoppage of increment being minor punishment can be inflicted without giving show cause notice to the delinquent.

4. From perusal of the provision as contained in Rule 168 of the Board of Miscellaneous Rules, I do find that it simply stipulates that the punishments of censor, stoppage of increment and promotion can be passed after giving due opportunity to the delinquent to have his say in the matter of infliction of the aforesaid punishment.

5. It be noted that it speaks about the stoppage of increment apart from other punishments mentioned above but it never speaks about the stoppage of increment with cumulative effect which is a major punishment in view of the ratio laid down in a case of (supra) and in the case of (supra) and therefore, if a major punishment is awarded, then the delinquent in view of the constitutional mandate needs to have his say in the matter of infliction of the punishment. In other words, before infliction of the major punishment, one should be served with the second show cause notice so that the delinquent may have his say in the matter. But admittedly in the instant case, the Petitioner had never been served with second show cause notice and still punishments, one of which is a major punishment, has been awarded which is against the Constitutional Mandate and hence, the order, as contained in Memo No. 3154 dated 29.5.2010 (Annexure 10) is hereby quashed. However, the authority would be at liberty to proceed with the matter awarded punishment in accordance with law after giving due opportunity to the Petitioner.

6. In the result, this application is allowed. Application allowed.