

(2021) 11 JH CK 0023
In the Jharkhand High Court
Case No : Writ Petition (S) No.415 Of 2021

Rajendra Prasad Sharma

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 311, 311(1), 311(2)
Jharkhand Government Servant (Classification Control And Appeal) Rules, 2016 —
Rule 14, 14(3), 14(4), 15, 17, 27
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), (3) (1) (iii)

Citation : (2021) 11 JH CK 0023

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Rahul Kumar, Apoorva Singh, Suresh Kumar

Final Decision : Allowed

Judgement

Dr. S. N. Pathak, J

1. The petitioner has approached this Court for quashing the order as contained in Memo No. 54 dated 12.01.2021 (Annexure-12) passed by the Director, Primary Education, whereby and whereunder the petitioner has been imposed with a major punishment of dismissal from service without conducting a proper and full-fledged Departmental Proceeding by competent authority. Further, prayer has been made for quashing the Memo of Charge dated 05.09.2020 (Annexure-1) and to reinstate the petitioner in service with back wages along with all consequential benefits.

2. The case of the petitioner lies in a narrow compass. The Petitioner was appointed to the post of Assistant Teacher in Science subject on 14.05.1988 in Government Middle School, Jalim, Latehar. Thereafter, he was appointed as Block Education Extension Officer (hereinafter referred as BEEO) on 10.04.1992 through competitive examination held for Sub-ordinate Education Service in the year, 1989 and was posted at Bero, Ranchi. Since his appointment, the petitioner

served at different places of posting with utmost sincerity. During the period 2019-20, when the petitioner was posted as BEEO at Patrattu-I in Ramgarh District including the additional charge of Patrattu-II, a Charge Memo dated 05.09.2020 was framed against him without any show cause notice for not submitting the reports within time and misusing his chair to coerce the teachers into getting insurance policies from his wife, who is an Insurance Agent. The said Memo of Charge has been issued jointly by the Office of the District Superintendent of Education, Ramgarh and Deputy Commissioner, Ramgarh. While the petitioner was oblivious to the Memo of Charge framed against him, the said Charge of Memo was forwarded by the Respondent-DSE to the Director, Primary Education vide his letter contained in memo No. 1297 dated 08.09.2020. for further proceeding. It is specific case of the petitioner that when the Memo of Charge was served upon the petitioner, the supporting documents containing the relied upon documents/evidence were not supplied to him. Thereafter, vide letter contained in memo No. 1199 dated 24.09.2020 issued by the Under Secretary, Primary Education by which the petitioner was called upon hearing of the matter. Pursuant to the same, the petitioner appeared before the respondent-Director, Primary Education on 24.09.2020 and was directed to immediately give his written reply to six charges framed against him, which the petitioner submitted carefully, elucidating that all the required reports for his districts had been duly submitted and he had never misused his position to coerce the teachers into getting insurance policies. Thereafter, the Director, Primary Education vide his office order dated 02.11.2020 recorded a finding that the petitioner was guilty of the charges and directed that second show cause may be issued to him and he be suspended with immediate effect although nothing cogent had been brought on record to substantiate the charges of imputation relating to dereliction of duties and coerce of teachers. Upon the direction of the Director, Primary Education, the petitioner was suspended vide Office order contained in Memo No. 1335 dated 10.11.2020 issued by the Deputy Director, Primary Education. The second show cause was issued to the petitioner vide letter contained in Memo No. 1370 dated 23.11.2020 by the Under Secretary, Primary Education and petitioner was directed to submit his reply, within 15 days. Pursuant to the same, the petitioner replied vide his letter dated 04.12.2020 requesting the authorities to clarify certain aspects w.r.t. disciplinary proceedings initiated against him and also prayed for time to submit his reply and take effective defense. In the meanwhile, the respondents have exonerated 31 Assistant Teachers, who were alleged to have been taken undue advantage of the position of the petitioner in order to get their insurance policies and their salaries were released vide office order contained in Memo No. 1750 dated 18.12.2020.

3. It is further the case of the petitioner that although the documents demanded by the petitioner were not provided but from his memory and limited resource, he gave his reply on 21.12.2020 to the allegations levelled against him. Thereafter, The respondent-Director, Primary Education vide office order dated 12.01.2021 passed the order of punishment of dismissal from service as against

the Petitioner, without considering the nature of allegations and the replies/ defence submitted by the petitioner. Hence, the petitioner has been constrained to knock the door of this Court.

4. Mr. Rahul Kumar, learned counsel for the petitioner submitted that the impugned order of dismissal from service is against the Service Rule as the dismissal of the Petitioner from service, amounts to a major punishment under the Jharkhand Government Servant (Classification Control and Appeal) Rules, 2016 and as per Rule 17 of the said Rules, no major punishment can be imposed upon a government employee without holding an enquiry in the manner provided under the Rules and the entire copy of articles of charge, list of documents, witness depositions and other relevant documents must be served upon the delinquent officer. Furthermore, he must be accorded an opportunity to give his written statement of defence which must be taken into consideration during the hearing in disciplinary proceedings. He further submitted that there is folly in the departmental proceeding as Memo of Charge was not framed by competent authority neither approved by Disciplinary Authority. There is no full-fledged Departmental Proceeding contemplated by Appointing Authority. He further contended that no opportunity was given to the petitioner to cross examine the witnesses and also no Enquiry Report was submitted in relation to findings on the Memo of Charge. Extraneous materials beyond the purported charge were considered. Guilt under the provisions of Prevention of Corruption Act, 1988 has been opined, but there was no criminal prosecution, however, departmental proceedings under the provisions of Jharkhand Government Servant (Classification, Control and Appeal) Rules has been contemplated. There is complete violation of principles of natural justice and procedure established under Jharkhand Education Code and Jharkhand Government Servant (Classification, Control and Appeal) Rules. The order of punishment is shockingly disproportionate.

5. He further argued that the finding recorded by the Enquiry Officer is highly perverse and extraneous to the charges as he has been held guilty under the provisions of Prevention of Corruption Act, 1988 although there had been no Criminal Prosecution as against the petitioner. The petitioner has further been denied access to the enquiry report and the materials on which the Departmental Proceeding had been based. Lastly it is submitted that during the pendency of the writ petition, the petitioner has crossed the age of superannuation and as such, an appropriate direction may be passed for payment of entire dues, if he succeeds.

6. To buttress his argument, learned counsel for the petitioner placed heavy reliance on the following judgments of Hon'ble Apex Court as well as this Court:

1. Managing Director, ECIL, Hyderabad Vs. B. Karunakar & Ors., reported in (1993) 4 SCC 727.
2. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. reported in

(1998) 8 SCC 1

3. State of Uttaranachal&Ors. Vs. Kharak Singh, reported in 2008 (8) SCC 236

4. State of Uttar Pradesh &Ors. Vs. Saroj Kumar Sinha, reported in 2010 (2) SCC 772

5. Union of India Vrs. B.V. Gopinath reported in 2014 (1) SCC 351

6. Chennai Metro Politan Water Supply &Swelage Board and Ors. Vs. T.T. MuraliBabu, reported in (2014) 4 SCC 108

7. Abhay Kumar Vrs. State of Jharkhand &Ors.) reported in 2016 SCC Online 2592

8. Union of India &Ors. Vs. Ram Lakhan Sharma reported in 2018 (7) SCC 670

9. 2020 SCC Online Jhar, 410

7. Per contra counter-affidavits have been filed.

8. Mr. Suresh Kumar, learned counsel appeared on behalf of the respondent - State submitted that impugned order of dismissal from service has been passed after complying with the principles of natural justice. The respondent-Director, vide office order dated 12.01.2021 after considering the nature of allegations, the enquiry report & provision of law had passed the order of punishment of dismissal from service as against the Petitioner and as such, there is no illegality or infirmity in the impugned order. He further submitted that upon proper departmental proceeding, by giving proper opportunity to defend his case, the petitioner was found guilty of misuse of public post for personal benefits and after giving show cause notice, punishment of dismissal was passed against the petitioner under Rule-14 of Jharkhand Government Employee (classification, control & Appeals) Rule 2016. There is no violation of principles of natural justice as the petitioner has also served second show cause notice. He further submitted that there is an alternative remedy i.e. Appellate Authority and petitioner has directly approached this Court without availing the alternate remedy and as such, this writ petition is liable to be dismissed in limine. The D.S.E. and Deputy Commissioner are competent authority to constitute and recommend the Memo of Charge which has been forwarded to the Director. The enquiry was made by the Director, Primary Education, Jharkhand with assistance of Under Secretary and cross examination of 50 teachers were also done and as such, the spirit of Jharkhand Government Servants (Classification, Control & Appeal) rules, 2016 has been followed. He further submitted that the petitioner was found guilty of the charges and as such, the petitioner was inflicted with the punishment of dismissal from service under the provisions of the State Cadre Rules and Jharkhand State (Classification, Control & Appeal) Rules, 2016.

9. To buttress his argument, learned counsel for the petitioner placed heavy reliance on the judgment of Hon'ble Division Bench of this Court in case of Hemlal HembramVs. Union of India &Ors. passed in LPA No.256 of 2019.

10. Be that as it may, having gone through the rival submissions of the parties and on perusal of the records, the case of the petitioner needs consideration for the following facts and reasons:-

I. The impugned order of dismissal is arbitrary and cryptic in nature and has been passed dehors the rules inasmuch as the Disciplinary Authority has considered the case of corruption against the petitioner, which is not nowhere mentioned in the Memo of Charge. The Hon'ble Apex Court in case of *M.V. Bijlani v. Union of India*, reported in (2006) 5 SCC 88, it has been held thus:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

II. The cardinal principles of natural justice has been given a complete go-bye. In a case where the Disciplinary Authority proposes to award punishment of dismissal i.e. capital punishment, a full-fledged departmental proceeding is warranted, but in the instant case, there is no full-fledged department proceeding neither any Enquiry Officer nor any Presenting officer has been appointed and also the petitioner was never given any opportunity to cross examine the witnesses. The Hon'ble Apex Court in case of *Union of India v. Ram Lakhan Sharma*, reported in (2018) 7 SCC 670 has held thus:

24. The disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercising quasi-judicial power has to act in good faith without bias, in a fair and impartial manner.

25. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. All its facets are steps to ensure justice and fair play. This Court in *Suresh Koshy George v. University of Kerala* [*Suresh Koshy George v. University of Kerala*, AIR 1969 SC 198] had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In para 7 this Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts

and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. The following was held in paras 7 and 8: (AIR p. 201)

"7. ... The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In *Russell v. Duke of Norfolk* [*Russell v. Duke of Norfolk*, (1949) 1 All ER 109 (CA)] , Tucker, L.J. observed: (All ER p. 118 D-F)

'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.' "

26. A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in *A.K. Kraipak v. Union of India* [*A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 : AIR 1970 SC 150] . This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In para 20 the following has been held: (SCC p. 272)

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (*nemo debet esse judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. ..."

28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not

indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

36. Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.

37. The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

Further, The Hon'ble Apex Court in case of *State of U.P. v. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772 has held thus:

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

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 un rebutted 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.

This extract is taken from State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675 : 2010 SCC OnLine SC 248 at page 782

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

III. Material evidences were not considered neither the necessary documents were furnished to the petitioner to defend his case. The Hon'ble Apex Court in case of State of Uttaranchal v. Kharak Singh, reported in (2008) 8 SCC 236 , it has been held thus:

19. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing/disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

20. A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The Department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply-affidavit

filed by the Department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed out the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.

IV. Looking into the Memo of Charge, it can be comfortably incurred that the punishment of dismissal is shockingly disproportionate to the charges.

V. There has been procedural latches in the departmental proceedings. Charges were neither framed nor approved by the Disciplinary Authority, which is the requirement of law. Even the respondent agrees to the contention of the learned counsel for the petitioner that charges were never approved by the Competent Authority. Similar issue fell for consideration before the Hon'ble Apex Court in case of Union of India Vs. B.V. Gopinath, reported in (2014) 1 SCC 351, wherein the Hon'ble Apex Court has held that :

40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered stated and re-stated, by this Court in numerous judgments, since the Constitution came into effect on 19th January, 1950. Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated CCS (CCA) Rules, 1965.

41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the

Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

49. We are unable to accept the submission of the learned Addl. Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DOP & T, issuance of show cause notice in case of disagreement with the enquiry officer report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty; and revision/review/memorial have to be taken by the Finance Minister.

In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rule 3(1)(i) and (3) (1) (iii) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the appellant herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.

52. In our opinion, the submission of the learned Addl. Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of law. This plea of the respondent has been accepted by the CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge

sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority. Undoubtedly, this Court in the case of P.V.Srinivasa Sastry & Ors. Vs. Comptroller and Auditor General & Ors.[19] has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that : (SCC P 422, para 4)

"4..... However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority."

It is further held that

"4. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post."

Further, the Hon'ble Division Bench of this Court in case of Abhay Kumar Vs. The State of Jharkhand & Ors. reported in 2016 SCC Online Jhar 2592 has held thus:

4. In "B.V. Gopinath Case", the Hon'ble Supreme Court repelled the contention raised on behalf of the Union of India that once the disciplinary authority approves the initiation of the disciplinary proceeding, the charge-sheet can be drawn by any authority other than the disciplinary authority. The Supreme Court further held that the provision seeking approval of the charge-memo subsequent to the decision taken by the competent authority for initiation of the departmental proceedings is in consonance with the mandate contained under Article 311 (1) & (2) of the Constitution of India.

5. Vide order dated 07.12.2015, original file was called for and today, the learned counsel for the respondent-State of Jharkhand has produced the original record of the case. On a perusal of the original records, both by the counsel for the respondent-State of Jharkhand as well as the counsel for the petitioner, they agree that after the approval for initiation of departmental proceeding was taken on 11.11.2011 from the Minister of Rural Development Department, the file was not placed before the competent authority i.e., the Minister seeking his approval of the charges contained in the charge-memo. A photo-copy of the relevant extract of the record which was obtained by the petitioner through RTI has also been placed on record by way of supplementary affidavit. We, for our satisfaction, have also perused the original records and we find that the charge-memo served upon the petitioner was not approved by the competent authority, though required under the Rules.

VI. The enquiry was never conducted as per the Jharkhand Government Servant (Classification Control and Appeal) Rules, 2016 as there was no regular departmental proceeding as per the said Rules and also no major punishment can be imposed upon a government employee without holding an enquiry in the manner provided under the said Rules.

VII. The finding recorded by the Enquiry Officer is highly perverse and extraneous to the charges as he has been held guilty under the provisions of Prevention of Corruption Act, 1988, but there had been no criminal prosecution against the petitioner.

VIII. So far as the contention of the learned counsel for the respondents that there is provision of Appeal and as such, petitioner without availing the alternative remedy has rushed to this Court is concerned, the law is well settled that when there is a violation of principles of natural justice and order is without jurisdiction, the High Court sitting under Article 226 of the Constitution of India has every jurisdiction to interfere and entertain the writ petition even if there is an alternative remedy. The Hon'ble Apex Court in case of Whirlpool Corporation V. Registrar of Trade Marks, Mumbai & Ors., reported in (1998) 8 SCC 1 has held thus:

"15. Under Article 226 of the Constitution, the High court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".

Further, the Hon'ble Apex Court in case of Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors. reported in (2003) 2 SCC 107, has held thus:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been

allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings".

Further, the Hon'ble Apex Court in case of Uttar Pradesh Power Transmission Corporation Ltd. & Anr. Vs. CG Power and Industrial Solutions Limited and Anr. reported in (2021) SCC Online SC 383, has held thus:

67. Even though there is an arbitration clause, the petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the counter affidavit filed by the UPPTCL to the writ petition in the High Court. In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition.

68. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (1) where the writ petition seeks enforcement of a fundamental right, (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the rives of an Act is under challenge. Reference may be made to Whirpool Corporation Vs. Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1 :AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation V. Gayatri Construction Company, reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1.

69. In Harbanslal Sahnia V. Indian Oil Corporation Ltd., reported in (2003) 2 SCC 107, this Court allowed the appeal from an order of the High Court dismissing a writ petition and set aside the impugned judgment of the High Court as also the impugned order of the Indian Oil Corporation terminating the dealership of the appellants, notwithstanding the fact that the dealership agreement contained in arbitration clause.

11 . As a sequel to the aforesaid rules, guidelines and judicial pronouncement, the impugned order of dismissal dated 12.01.2021 is fit to be quashed and set aside and same is hereby quashed and set aside. As a result of quashment of impugned order, the petitioner is directed to be reinstated into services with 50 % backwages to be paid to him from the date of dismissal to reinstatement with all consequential benefits, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

12 It is made clear that if the petitioner has already crossed the age of superannuation, the respondents shall take appropriate decision for making payment of aforesaid benefits to him from the date of his dismissal till date of his superannuation, in accordance with law, within the aforesaid period itself.

13 . Resultantly, writ petition stands allowed. No order as to cost.