
(2003) 04 JH CK 0090

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2726 of 2001

Sadhu Sharan Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-04-2003

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(B)

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

Citation : (2003) 2 JCR 712

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant; Suresh Kumar, JC to AAG for the respondent Nos. 1 to 3 and A. Allam, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—Heard Mr. Rajendra Prasad, learned counsel for the petitioner, Mr. A. Allam, learned counsel for the respondent No. 4 and Mr. Suresh Kumar, learned Junior Counsel to the Additional Advocate General for the State of Jharkhand.

2. By order dated 20.12.2001, the Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna was ordered to be impleaded as respondent No. 4 and that is how Mr. A. Allam who had accepted notice on behalf of the State of Bihar is representing the case of the said respondent.

3. The grievance of the writ petitioner in the instant case is for quashing the order dated 16.3.2000 (as contained at Annexure-10) passed by the respondent No. 4 whereby and whereunder 20% of the pension payable to the petitioner was ordered to be deducted as a measure of punishment. By reason of the said order, the representation of the petitioner has been rejected.

4. The shorts facts which are necessary to be taken note of for purposes of adjudication of this case are that on 19.3.1968, the petitioner was appointed as a

Sub-Deputy Collector by the Bihar Public Service Commission. Subsequently all posts of Sub-Deputy Collectors were merged as a result whereof, on and from 1.4.1975, he became a Deputy Collector and was confirmed on that post with effect from 1.4.1978.

5. Upon initiation of a departmental proceeding as also a criminal proceeding, the petitioner was placed under suspension with effect from 27.1.1998.

6. By letter dated 14.12.1989, the Deputy Commissioner did not find the petitioner guilty of any of the charges leveled against him.

7. Subsequently, it appears from paragraph 4 of the impugned order that by letter dated 18.8.1990 the suspension of the petitioner was revoked. However, finding the charges very grave against the petitioner, a resolution was taken to initiate proceedings under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, whereafter by order dated 19.4.1991, the Commissioner, North Chhotanagpur, Hazaribagh was appointed as the Conducting Officer.

8. However, according to Mr. Rajendra Prasad, the notification by which departmental proceeding was initiated under Rule 55 was issued on 4.7.1991.

9. Be that as it may, the fact remains that the proceeding which was in existence prior to the date of retirement (whether initiated on 19.4.1991 or 4.7.1991) was the proceedings under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930.

10. Mr. Rajendra Prasad, learned counsel for the petitioner, however stated and submitted that only in order to deprive the petitioner from the benefits of time bound promotion, the respondents re-started the departmental proceeding against him. Consequently he filed CWJC No. 273 of 1991 (R) which was disposed off on 13.1.1992 by Annexure-1. Mr. Rajendra Prasad states that by reason of the afore-mentioned judgment dated 13.1.1992 it is apparent that by letter dated 14.12.1989, the Deputy Commissioner came to a conclusion that the petitioner was not guilty of the charges leveled against him and accordingly, sent a recommendation to the Joint Secretary that the petitioner should be exonerated from the charges.

At paragraph 23 of the judgment, however, the Hon"ble Single Judge held that;--

"the disciplinary authority of the petitioner, evidently cannot be the D.C. Ranchi. It is, therefore, clear that by reason of this letter dated 14.12.1989, the Deputy Commissioner has not and/ or could not have held the petitioner not guilty of the charges."

At paragraph 25, Hon"ble Single Judge held that :--

"in such a situation, this Court cannot grant a writ of or in the nature of mandamus directing the payment of salary to the petitioner from 27.1.1988 till 19.8.1990 i.e. the period of suspension nor can it direct grant of super selection

grade to the petitioner. However, it must be observed that the case in hand depicts a sordid state of affairs. In view of the fact that the order of suspension as against the petitioner was revoked on 18.8.1990 and further in view of the fact that as far back as on 14.12.1989 the Deputy Commissioner had sent a preliminary report that no case has been made out as against the petitioner, it was obligatory on the part of the Personnel Department of the State to take a final decision in the matter at an early date with regard to continuation of the departmental proceeding as against him. It appears that such a step was sought to be taken only on 7th December, 1990 (Annexure-1), whereby the Deputy Commissioner, Ranchi was requested to send all the relevant records to the Joint Secretary of the Personnel and Administrative Department."

At paragraph 26, the Hon"ble Single Judge held and observed :--

"The State of Bihar was expected to take a final decision in the matter of continuance of disciplinary proceeding at an early date, as against the petitioner, keeping in view the fact that the petitioner would reach his age of superannuation in January 1992."

At paragraph 28, the Hon"ble Single Judge observed that in the facts and circumstances of this case, however,

"I may observe that the State should consider the desirability of not proceeding with the matter any further in view of the fact that the petitioner would be superannuating in January, 1992, by which time it may not be possible for the State to conclude the departmental proceedings."

At paragraph 29 and 30, the Hon"ble Single Judge ordered that :--

"if the departmental proceeding is to continue and the same cannot be concluded with the aforesaid period, the petitioner has to be given an extension in service. The State of Bihar is directed to pass an order as early as possible with regard to continuance of the disciplinary proceeding as against the petitioner and preferably before the attains the ages of superannuation."

The aforementioned paragraphs in quotes are quoted verbatim from Annexure-1 supplied by the petitioner.

11. According to Mr. Rajendra Prasad, none of the aforementioned directions were complied with and the disciplinary proceeding was not allowed to be closed. On the contrary the disciplinary proceedings continued. In the meantime, the petitioner retired on and from 31.1.1992. Thus, it is apparent that on 4.7.1991 while the petitioner was in service. Rule 55 aforesaid had been applied. The judgment of the learned Single Judge was delivered on 13.1.1992 and the petitioner retired on 31.1.1992. It was only thereafter that on 27.3.1992, as would be apparent from the following paragraphs that the proceedings were taken under Rule 43(B) of the Bihar Pension Rules.

12. On 27.3.1992, the Joint Secretary, Department of Personnel and

Administrative Reforms came out with a notification modifying the earlier notification dated 4.7.1991 by which proceedings under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 had been initiated. By reason of the said notification dated 27.3.1992 the earlier proceedings were converted under Rule 43(B) of the Bihar Pension Rules and the Commissioner, North Chhotanagpur Division, Hazaribagh was appointed as the Enquiry Officer.

13. According to Mr. Rajendra prasad, on 28.5.1992, the petitioner was asked to file his cause in relation to the charges concerning the allegation that the petitioner had made irregular payments to certain individuals. The petitioner filed his cause on 22.7.1992 and an Enquiry Report was submitted but copy thereof was not served upon the petitioner and instead, a second "Show Cause Notice" dated 15.11.1994 (Annexure 3) was issued asking him to show cause as to why 20% be not deducted from the pension of the petitioner. This notice has been marked as Annexure-3 to this Writ Application.

14. On 23.10.1992, the respondents came out with an order stating that the petitioner was not found fit for promotion to the senior selection grade. This compelled the petitioner to file a second Writ Application which was registered as CWJC No. 2834 of 1994 (R). The petitioner had also filed a contempt application bearing number MJC 116 of 1993 (R), but that proceeding, according to Mr. Rajendra prasad was dropped because, in the cause filed therein it was stated inter alia that his ease for promotion had been considered but his claim was rejected because he had retired on 31.1.1992.

While disposing of CWJC No. 2834 of 1994(R) a learned Single Judge of this Court held that :--

"It is well settled principle of law that rightful claim of an employee cannot be refused on the ground that he has already retired."

After having so held, the Hon"ble Single Judge directed the respondents :--

"to allow the Senior Selection Grade to the petitioner with effect from 1.4.1990 as he has been directed by the order of this Court dated 31.10.1992 in the aforesaid writ application within four weeks from the date of receipt/ production of a copy of this order. The respondent is further directed to calculate all the retirement benefits and on the basis of the senior selection grade pay scale applicable to the petitioner and pay the remaining retirement dues within two weeks thereafter. It goes without saying that the respondent authority will also pay the arrears arising therefrom with effect from 1.4.1990 within the time aforesaid. This writ application is accordingly disposed of but without costs."

15. On 17.12.1994 (Annexure-4) the petitioner filed his cause against the second show cause notice dated 15.11.1994 but the respondents without considering the same passed an order on 28.7.1997 (Annexure-5) directing deduction of 20% from the pension of the petitioner. Being aggrieved, the petitioner filed CWJC No. 3082 of 1997(R). Before that Court the petitioner had submitted that during the

pendency of that writ application all the retirement benefits legally payable to him had already been paid and the only grievance left to the petitioner was in respect of the deduction of 20% from the pensionary benefits ordered as per the order dated 28.7.1997 as contained a; Annexure-5 herein.

16. By order dated 13.7.1998 the aforementioned writ petition namely CWJC No. 3082 of 1997(R) was disposed off by giving liberty to the petitioner to file a representation before the authority concerned who was directed to pass a speaking order within a period of 6(six) weeks and if the claim of the petitioner was found to be genuine then appropriate orders were directed to be passed forthwith. Pursuant to the said order the petitioner filed his representation on 15.8.1998 as contained at Annexure-7 but, according to Mr. Rajendra Prasad, learned counsel for the petitioner, the Deputy Secretary to the Government, Department of Personnel and Administrative Reforms, Government of Bihar, by order/letter dated 16.10.1998 as contained at Annexure- 8 appears to have wrongly recorded the date of the said representation as 5.8.1998. However, the fact remains that by reason of the said order/letter the Deputy Secretary aforesaid held that there was no merit nor any fresh materials in the said representation and accordingly it was rejected.

Being aggrieved, the petitioner again moved a writ petition before the then Ranchi Bench of the Patna High Court vide CWJC No. 1168 of 1999(R). According to Mr. Rajendra Prasad, learned counsel for the petitioner, the said writ application was allowed by order dated 16.1.2000. From a perusal of the aforementioned order which has been marked Annexure-9, it appears that the writ petition was allowed on the ground that "the representation of the petitioner was not disposed of by a reasoned order nor the petitioner was heard by the respondents on his grievances" and "on that ground alone", the Hon"ble Single Judge held that the impugned order could not be sustained in law and the matter was once again remanded to the authorities to reconsider the representation afresh after giving opportunity of hearing to the petitioner and dispose it off by passing a reasoned order.

17. It is pursuant to the aforementioned order of the Hon"ble Single Judge passed on 6.1.2000 in CWJC No. 1168 of 1999(R) that the impugned order has been passed on 16.3.2000 vide Annexure 10 and which has been challenged by the Writ Petitioner in this case. Let it be recorded that while disposing off the Writ Application, the Hon"ble Single Judge had directed that the representation must be disposed off "within two weeks" from the date of receipt of a copy of the order. From Annexure 10 it appears that the copy of the order was received in the office on 24.1.2000. The period of two weeks was to lapse on 6th of February, 2000. However, on 7.2.2000 the respondents sent notice to the petitioner asking him to appear on 11.2.2000 at 4.30 p.m. The said notice dated 7.2.2000 was received by the petitioner on 9.2.2000. However, the petitioner did not appear and on the contrary on 9.2.2000 he sent an application wherein he requested that the hearing be adjourned till the middle of April 2000. This

request was rightly not granted considering the mandatory nature of the order passed by the High Court directing disposal within two weeks. Moreover, the period had already lapsed on 6.2.2000 but the respondents nonetheless sent notice on 7.2.2000 asking the petitioner to appear on 11.2.2000, Therefore, the action on the part of the respondents on this score must be said to be Insufficient compliance of the order of the High Court.

18. Mr. Rajendra Prasad, learned counsel for the petitioner has raised basically the following points for consideration :

(a) Firstly, he has argued that the continuance of the old proceedings upon conversion to Rule 43(B) on 27.3.1992 from Rule 55 of the CS (CCA) Rules was itself illegal because there could not have been a conversion after the retirement of the petitioner. His further argument is that Rule 43(B) could not have been applied on the petitioner, he having retired on 31.1.1992.

(b) He has further submitted that in view of his retirement and also in view of not closing the proceedings as per paragraph 28 of the judgment passed in CWJC No. 263 of 1991(R) (Annexure-1) and also in view of not extending his services upon failure to conclude the proceedings as per paragraph 29 thereof, the old proceedings will be deemed to have died a natural death and therefore continuance of old proceedings was clearly barred by law.

19. The first argument to the effect that the continuance of the old proceedings upon conversion to Rule 43(B) of the Bihar Pension Rules on 27.3.1992 from Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 was itself illegal because there could not have been a conversion after the retirement of the petitioner and that Rule 43(B) could not have been applied on the petitioner, he having retired on 31.1.1992 has no merit in the facts and circumstances of this case inasmuch as the order dated 27.3.1992 will never be deemed to be an order of conversion of a proceeding under Rule 43(B) of the Bihar Pension Rules even if such language has been used in the said order.

In fact the proceedings will be deemed to be a proceeding under Rule 43(B) of the Bihar Pension Rules for all practical purposes.

In the instant case the proceedings which were initiated during the time when the petitioner was in service was under Rule 55 of, the Civil Services (Classification, Control and Appeal) Rules, 1930. Although he retired on 31.1.1992 and although by the notification dated 27.3.1992, the respondents used the words that the proceedings were being converted into Rule 43(B) of the Bihar Pension Rules after his retirement, yet, in view of the provisions contained in Rule 43(B) itself, and especially the "Explanation" appended after the proviso to Rule 43(B), it will be deemed that a departmental proceeding was always in continuation under that provision. There is a bar under the proviso to Rule 43(B) disabling the government from instituting a departmental proceeding but such disability is dependent upon Clause (a) and (b) of the proviso to Rule 43(B). In the instant case we are concerned with the proviso (a)(i) of Rule 43(B) which

reads as follows :--

"Provided that--(a) Such departmental proceedings, if not instituted while the Government Servant was on duty either before retirement or during reemployment.

(i) shall not be instituted save with the sanction of the State Government." In the instant case the departmental proceedings had already been initiated when the charge-sheet had been served upon him while he was in service and therefore the disability clause mentioned above will not operate against the Government and that too, when under the "Explanation" appended to Rule 43(B) It has been provided as follows :--

Explanation.--(a) For the purposes of the Rule departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him, if the Government Servant has been placed under suspension from an earlier date, on such date; and"

We are concerned only with Explanation (a) quoted above and therefore the other sub-clauses are not being referred. From a plain reading of Explanation (a) it is apparent that departmental proceedings will be deemed to have been Instituted when the charges were issued to him. In the instant case, the charges were issued much prior to his date of superannuation and therefore after retirement in terms of Rule 43(B) Explanation (a), the Government's right to continue will be deemed to have been always there and therefore, even if by order dated 27.3.1992 the respondents used the word conversion or substitution, the same cannot be allowed to be capitalized by the petitioner. Mr. Rajendra Prasad, learned counsel for the petitioner referred to the case of Mohd. Wakil Vs. The State of Bihar and Others, .

I am afraid I am unable to agree to the aforementioned argument of Mr. Rajendra prasad," because the said judgment was set aside in LPA No. 504 of 1997 on 30.7.2002. Paragraph 4 of the judgment of the Letters Patent Appellant Court is worth quoting :--"On going through this judgment we respectfully find ourselves in disagreement with the view of the learned Single Judge because Rule 43(B) (supra) does not at all contemplate the passing of any specific order, much less any "conversion order" with respect to the continuance of the proceedings. The only requirement of Rule 43(B) is that if the proceedings have not been Instituted while the Government servant was on duty, these can not be instituted except after the sanction of the State Government, In the present case the sanction question is not at all relevant or applicable because it the admitted case of the parties that the proceedings were in fact Instituted in the year 1990 (at a point of time when the respondent was "on duty") by the issuance of the charge-sheet against him. Actually when we look at the Explanation to Rule 43(B) (supra), we find that even therein it has clearly been mentioned that the departmental proceeding shall be deemed to have been instituted when the charge-sheet is issued to the concerned delinquent Government employee. In

this case, the charge-sheet having been issued at a point of time when he was In service, the departmental proceeding should be deemed to have been instituted at that very point of time and, therefore, it cannot be gainsaid that the proceedings were vitiated on any count. The view expressed by the learned Single Judge of the Patna High Court therefore does not commend us to be correct in law."

20. The other argument to the effect that in view of his retirement and also in view of not closing the proceedings as per paragraph 28 of the judgment passed in CWJC No. 263 of 1991 (R) (Annexure-1) and also in view of not extending his services upon failure to conclude the proceedings as per paragraph 29 thereof, the old proceedings will be deemed to have died a natural death and therefore continuance of old proceedings was clearly barred by law.

The aforementioned argument must also be rejected on account of the fact that from a perusal of paragraph 28 of the said judgment this Court is satisfied that it was only a desire on the part of the Hon''ble Single Judge to observe that in view of the fact that the petitioner would be superannuating in January 1992 itself, the State should consider the desirability of not proceeding with the matter in relation to the proceedings under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules 1930 and not in relation to a totally separate proceeding, i.e. Rule 43(B) of the Bihar Pension Rules. Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 relates to imposition of punishment of dismissal, removal, compulsory retirement or reduction, whereas Rule 43(B) of the Bihar Pension Rules relates to withholding or curtailing pension and pensionary benefits. It is relevant to mention that so far as the matter relating to Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 is concerned, paragraph 4 of the impugned order clearly informs that the petitioner was put under suspension on 27.1.1988 charge- sheet was served on him. 1.7.1988 and the order of suspension was revoked on 18.8.1990 whereafter on the basis of the report submitted it was found that charges were very grave against him and therefore by order dated 19.4.1991 the Commissioner, North Chhotanagpur was appointed as the Enquiry Officer. The judgment of the Hon''ble Single Judge was in that context and it was delivered on 13.1.1992. The petitioner retired on 31.1.1992 and therefore on 27.3.1992 the respondents decided to proceed under the provisions of the Rule 43(B) of the Bihar Pension Rules. Therefore, the order/judgment of the Hon''ble Single Judge as contained at Annexure-1 was in relation to the proceeding under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 and not under Rule 43(B) of the Bihar Pension Rules.

There is a lot of difference between the aforementioned two Rules. While 43(B) deals with the right of withholding or withdrawing pension, Rule 55 on the other hand deals with dismissal, removal, compulsory retirement or reduction in rank. Moreover, Rule 55 has to be read along with Rule 55(A) as also Rule 49 of the Civil Services Control and Appeal Rules, 1930. It would therefore be worthwhile

to read the said Rules in juxtaposition to each other :--

Rule 43(B)-Bihar Pension Rules Rules 49, 55 and 55-A of the Civil Services (Classification, Control and Appeal) Rules, 1930

"The State Government further reserve to themselves the right of withholding or withdrawing pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment I after retirement:

Rule 49.? The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in Rule 14, namely :

(i) Censure

(ii)

Withholding of increments, of promotion, including stoppage at an efficiency bar.

(iii)

Reduction to a lower post or time-scale, or to a lower stage in a time-scale.

(iv)

Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Provided that? [(iv-a)Compulsory retirement.]

(a)

Such departmental proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment :

(v) Suspension

(vi)

Removal from the civil service of the Crown, which does not disqualify from future employment.

(i)

shall not be instituted save with the sanction of the State Government;

(vii)

Dismissal from the civil service of the Crown, which ordinarily disqualifies from

future employment.

(ii)

shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

Explanation I.? The discharge?

(iii)

shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(a)

of a person appointed on probation, during or at the end of the period of probation, on grounds arising out of the specific conditions laid down by the appointing authority, e.g. want of a vacancy, failure to acquire prescribed special qualifications or to pass prescribed test.

(b)

judicial proceedings if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been Instituted In accordance with sub-clause (ii) of clause (a); and

(b)

of a person appointed otherwise than under contract to hold a temporary appointment, on the expiration of the period of the appointment.

(c)

the Bihar Public Service Commission, shall be consulted before final orders are passed.

(c)

of a person engaged under contract, in accordance with the terms of his contract does not amount to removal or dismissal within the meaning of this rule.

Explanation.? For the purposes of the rule ?

(a)

departmental proceeding shall be deemed to have been Instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

Explanation II.? The discharge of a probationer, whether during or at end of the period of probation for some specific fault or on account of his unsuitability for

the services, amounts to removal or dismissal within the meaning of this rule.

(b)

judicial proceedings shall be deemed to have been instituted :?

[Explanation III.? Compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement does not amount to a penalty within the meaning of this rule].

(i)

in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal Court: and

(ii)

in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

Rule 55. "Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal, compulsory retirement 1[or reduction] shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal Court or by a Court-Martial) 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. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard In person. If he so desires or if the authority concerned so direct, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall De entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer, conducting the inquiry may, "or special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirement of the rule and those requirements can be waived without Injustice to the person charged.

The full procedure prescribed in this rule need not be followed in the case of a probationer discharged in the circumstances described in Explanation II to Rule

49. In such case, it will be sufficient If the probationer is being apprised of the grounds on which It is proposed to discharge him and his reply duly considered before orders as passed.

Rule 55-A. Without prejudice to the provisions of Rule 55, no order imposing the penalty specified In clause (i), (ii) or (iv) of Rule 49 (other than an order based on facts which have led to his conviction in a criminal Court or by a Court-Martial, or an order super-seding him for promotion to a higher post on the ground of his unfitness for that post) on any Government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make and such representation if any has been taken into consideration before the order is passed :

Provided that the requirements of this rule may, for sufficient reason to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

Thus, upon a plain reading of the aforementioned rules and comparing them with each other, it is evident that Rules, 49 55 and 55-A of the Civil Services (Classification, Control and appeal) Rules, 1930, contemplate the punishment to be inflicted "in service" while Rule 43(B) of the Bihar Pension Rules contemplates a situation "post service". The two are therefore totally different and the judgment of the learned Single Judge was therefore confined to the "in service" provisions and did not say even a word about the "post service" action to be taken.

Moreover paragraph 29 of the said judgment says that if the departmental proceeding is to continue and the same cannot be concluded before the date of superannuation meaning thereby the departmental proceedings in relation to Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, then the petitioner has to be given an extension in service. The extension in service is referred to in Rule 73 of the Bihar Service Code which says that:--

"The date of compulsory retirement of a government servant is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing."

The Government having chosen not to exercise the option either under Rule 73 of the Bihar Service Code or under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, but having opted to take action under Rule 43(B) of the Bihar Pension Rules, it cannot by any stretch of imagination be said that they are estopped from proceeding in the matter having not complied with the directions contained at paragraph 28 and 29 of the judgment of the learned Single Judge as contained at Annexure-1. Moreover, this Court refrains from giving any positive direction in favour of the petitioner in this context because if there was any violation of the order of the Single Judge, then the proper course for him would have been to move a contempt application. Mr. Rajendra Prasad

has already submitted that he did move a contempt petition which was registered as MJC No. 116 of 1993 (R) but was dropped on account of the fact that in the cause filed therein it was stated inter alia his case for promotion had been considered but his claim was rejected because he had retired on 31.1.1992. The petitioner could very well have pursued the Contempt Application but he did not do so.

21. The other ancillary points which were also argued and which does not appeal to this Court are that it has not been established that the petitioner caused any pecuniary loss to the Government. The reason that has been assigned by the authority rejecting the representation on 16.3.2000 vide Annexure-10 is a proper reason and therefore, this Court is not inclined to upset the same. So far as the contentions in relation to the other arguments, this Court is satisfied that the authority has correctly passed the impugned order which does not for any interference by this Court.

For the reasons aforesaid, there is no merit in this writ application. It is accordingly, dismissed. No order as to costs.