

(2025) 12 JH CK 1837
In the Jharkhand High Court
Case No : L.P.A. No.725 Of 2023

State of Jharkhand through the Secretary/Principal Secretary	APPELLANT
Vs	
Sushil Kumar	RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Limitation Act, 1963 — Section 5
Jharkhand Pension Rules, 2000 — Rule 43(b)
Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016 — Rule 18(2)

Citation : (2025) 12 JH CK 1837

Hon'ble Judges : Sujit Narayan Prasad, J; Arun Kumar Rai, J

Bench : Division Bench

Advocate : Ashok Kumar Yadav, Aditya Kumar

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J.

1. The instant appeal is under Clause 10 of the Letters Patent directed against the order/judgment dated 16.08.2023 passed in W.P.(S) No.1810 of 2023. The appeal since has been filed after a delay of 95 days and, as such, to condone the delay one application under Section 5 of the Limitation Act, has been filed being I.A. No.2480 of 2025.

2. This Court, therefore, deems it fit and proper to first consider the interlocutory application before entering into the issue on merit.

I.A. No.2480 of 2025

3. The instant application has been filed under Section 5 of the Limitation Act, 1963 to condone the delay.

4. The reason has been assigned, as per the averments made in paragraphs 6 to 9, and this Court, considering the reason to be sufficient cause to condone the

delay, is condoning the delay.

5. Accordingly, the delay of 95 days in preferring the appeal is hereby condoned.

6. The instant interlocutory application (I.A. No.2480 of 2025) stands allowed.

L.P.A. No.725 of 2023

7. The instant appeal has been filed under Clause 10 of the Letters Patent directed against the order/judgment dated 16.08.2023 passed by the learned Single Judge of this Court whereby and whereunder the order passed by the authority as contained in notification no. 04/Aa.Vi-01-1011/2017-5133 dated 23.12.2022 by which penalty of deduction of 10% of the petitioner's pension amount for five years has been imposed under Rule 43(b) of the Jharkhand Pension Rules, 2000, has been quashed and set aside.

Factual Matrix

8. The brief facts of the case as per the pleading made in the writ petition, which are required to be enumerated, read as under :-

The petitioner was appointed as Assistant Engineer in the Public Health and Engineering Department (now Department of Drinking Water and Sanitation) on 15.07.1987 in the unified State of Bihar. He was promoted to the post of Executive Engineer in the year 2005 and to the post of Superintending Engineer in the year 2018. Subsequently, he retired on 30.11.2019 from the post of Superintending Engineer, Department of Drinking Water and Sanitation, Urban Circle, Ranchi.

While the petitioner was holding the post of Executive Engineer, Drinking Water and Sanitation, Division No. 1, Giridih in the year 2013-14, agreements were entered between him and 18 different contractors for executing the work of relocation of 695 Drilled Tube Wells in Giridih Division for which work orders to the tune of Rs.335.66686 Lakhs were issued whereas the sanctioned amount for the said entire projects was Rs.329.16590 Lakhs. When the payment was not being made to one of the contractors namely M/s. Sayeed Akhtar for executing the said work with respect of 25 tube wells, he filed a writ petition before this Court being W.P.(C) No. 4068 of 2016 which was disposed of vide order dated 08.08.2016 with a direction to the respondent authorities to consider the claim of the petitioner of the said case i.e., the contractor, and to take a final decision. Accordingly, the decision was taken by the concerned authority vide order as contained in memo no. 872 dated 06.06.2017 holding that the present petitioner was responsible for excess financial burden and ordered him to make payment of Rs.5,94,745/- from his own pocket. Aggrieved with the said decision, the petitioner filed writ petition before this Court being W.P.(S) No. 5807 of 2017 which was allowed vide order dated 03.07.2018 setting aside the order dated 06.06.2017, however liberty was granted to the respondents of the said case to proceed in accordance with law framing a fresh memo of charges by initiating a regular departmental proceeding.

Accordingly, a regular department proceeding was initiated against the petitioner by framing three charges against him specifically alleging that he entered into agreements with contractors for higher amount than what was sanctioned and the same was recoverable from him. The memo of charges was served to the petitioner vide memo no. 191 dated 10.01.2019. The petitioner submitted his reply before inquiry officer on 14.02.2019 denying all the charges levelled against him. The inquiry officer, vide letter no. 42/2019-92(Anu) dated 30.08.2019, submitted the enquiry report to the Secretary, Department of Drinking Water and Sanitation, Government of Jharkhand stating that all the charges levelled against the petitioner were not found proved.

The disciplinary authority was not satisfied with the said enquiry report and vide letter no. 1759 dated 21.08.2020, directed the inquiry officer to submit another inquiry report. Accordingly, the inquiry officer, vide letter no. 42/2019-383 (Anu) dated 24.12.2020, again submitted the inquiry report to the Deputy Secretary, Department of Drinking Water and Sanitation, Government of Jharkhand (the respondent no. 3) finding the charges not proved against the petitioner. However, on this occasion, the disciplinary authority, vide letter no. 4234 dated 18.10.2022, issued second show cause notice to the petitioner stating that during departmental review, he was found guilty and as such was directed to file reply on the proposed punishment of deduction of 10% of his pension amount for five years. The petitioner submitted reply to the second show cause notice before the respondent no. 2 on 02.11.2022, however, vide impugned notification as contained in memo no. 5133 dated 23.12.2022 issued by the respondent no. 2, penalty of deduction of 10% of his pension amount for five years has been imposed upon him under Rule 43(b) of the Rules, 2000.

Being aggrieved with the order dated 23.12.2022, the petitioner approached this Court by filing writ petition being W.P.(S) No.1810 of 2023 taking the ground that the petitioner was not served any show cause notice with respect to the tentative point of difference of the disciplinary authority with the finding of the inquiry officer, rather the disciplinary authority directly came to the conclusion that the petitioner was found guilty of the charges levelled against him and served the second show cause notice for the proposed punishment.

The action of the disciplinary authority is not only contrary to the settled principle of law but the same is also in contravention of the provisions of rule 18(2) of Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016.

The ground has also been taken that not a single witness was examined against the petitioner during enquiry to prove the charges levelled against him irrespective of which he has been held guilty by the disciplinary authority.

The learned Single Judge, after hearing the parties, has quashed the impugned order as contained in notification no. 04/Aa.Vi-01-1011/2017-5133 dated 23.12.2022 and allowed the writ petition, against which the present appeal has been preferred by the State.

9. It is evident from the factual aspect that the writ petitioner while was in service, a departmental proceeding was initiated for committing some irregularities.

10. The enquiry officer was appointed. Altogether three charges were framed. The enquiry officer has found none of the charges proved. The disciplinary authority, therefore, has passed an order as contained in letter No.1759 dated 21.08.2020 directing the enquiry officer to submit another enquiry report.

11. The enquiry officer, vide letter No.382 dated 24.12.2020, again submitted enquiry report to the Deputy Secretary, Department of Drinking Water and Sanitation, Government of Jharkhand finding the charges not proved against the petitioner.

12. The disciplinary authority has issued second show cause notice as contained in letter No.4234 dated 18.10.2022 directing the writ petitioner, respondent herein, to furnish reply as to why 10% amount from pension for five years be not withheld.

13. The writ petitioner has submitted its reply. The reply having found to be not satisfactory, the impugned order has been passed on 23.12.2022 as contained in memo no. 5133 by which the penalty of deduction of 10% pension amount for five years has been imposed in exercise of power conferred under Rule 43(b) of the Jharkhand Pension Rules, 2000.

14. The writ petitioner-respondent, being aggrieved with the order dated 23.12.2022, has preferred writ petition being W.P.(S) No.1810 of 2023 challenging the same inter alia on the ground that even though the enquiry officer has not found the charges proved but without differing with the aforesaid enquiry report and assigning the reason of difference of opinion, straightaway the second show cause notice has been issued and based upon that the impugned punishment has been passed deducting 10% amount from the pension of the petitioner for five years in exercise of power conferred under Rule 43(b) of the Jharkhand Pension Rules, 2000.

15. The learned Single Judge, by putting reliance upon the judgment passed by the Hon'ble Apex Court in the case of Punjab National Bank & Others Vs. Kunj Behari Misra reported in (1998) 7 SCC 84 followed in the case of Lav Nigam v. Chairman & MD, ITI Ltd. & Another reported in (2006) 9 SCC 440, has quashed the impugned order dated 23.12.2022 which is the subject matter of the present appeal preferred by the State.

Submission of the learned counsel for appellant-State

16. Mr. Ashok Kumar Yadav, learned Sr. S.C.-I, appearing for the State of Jharkhand, has submitted by admitting in course of argument that the State is only concerned that the matter may be remitted from the stage of showing difference of opinion.

Consideration

17. At the outset it needs to refer herein that the delinquent employee-writ petitioner since has retired on 30.11.2019 on attaining the age of superannuation, as such, as per the law laid down by Patna High Court in the case of Shambhu Saran v. the State of Bihar & Others [1991 SCC OnLine Pat 341], the proceeding initiated under Civil Services (Classification, Control and Appeal) Rules has been deemed to be converted under the provision of Pension Rules and thereby the implication of Rule 43(b) of the Jharkhand Pension Rules, 2000 has become available.

18. The aforesaid argument has been advanced in order to follow the law as laid down by Hon'ble Apex Court in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) followed in Lav Nigam v. Chairman & MD, ITI Ltd. & Another (Supra).

19. The question which requires consideration in the facts of the present case, particularly on the basis of the argument advanced by learned counsel appearing for the State, at Bar, is –

as to whether at this stage, that too if any fault has been committed by the disciplinary authority, will it be proper for this Court to remit the matter for the purpose of fulfilling the lacunae even though the law has already been settled in the year 1998?

20. The second question which requires consideration in the facts of the present case is –

as to whether, in course of enquiry, it was available for the disciplinary authority to direct the enquiry officer to submit another report?

21. So far as the issue which pertains to the power which is to be exercised by the disciplinary authority for issuance of direction upon the enquiry officer to submit further report after submission of the initial report since the disciplinary authority was not satisfied with the said report, can it be said to be proper exercise of the power of the disciplinary authority.

22. The aforesaid aspect of the matter has been taken into consideration way back in the year 1971 in the case of K.R. Deb v. Collector of Central Excise, Shillong, (1971) 2 SCC 102 wherein the Hon'ble Apex Court has been pleased to hold that the consecutive enquiry is not permissible.

23. Similarly in Kanailal Bera v. Union of India and Ors., (2007) 11 SCC 517 holding of second inquiry on the same set of charge on which the person has been exonerated, relying upon the decision of the Apex Court in K.R. Deb v. Collector of Central Excise, Shillong, (supra) , it was held that holding of the inquiry where the applicant has been exonerated and holding him guilty of the charge on the second inquiry is not permissible, for ready reference the relevant paragraph is being quoted as under:

6. The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5-4-1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules, 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry.

24. Thus, if the consecutive enquiry will be permitted then that will mean to confer power upon the disciplinary authority to conduct the enquiry endlessly till the date the charge will not be found to be proved by the enquiry officer.

25. The Hon'ble Apex Court, in order to deal with such situation, has laid down the proposition in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) wherein it has been laid down that in a case where the enquiry officer has not found the charge proved, then it cannot be said that the disciplinary authority has become remediless or helpless, rather, it is available with the disciplinary authority to differ with the finding recorded by the enquiry officer but the reason is to be assigned and thereafter the same is to be forwarded to the delinquent employee for the purpose of taking his defence for its consideration by way of explanation. The relevant paragraph of the said judgment is being referred herein :-

"18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as

explained in Karunakar case [(1993) 4 SCC 727].”

26. The issue of remand has also been taken into consideration in the said judgment wherein the Hon'ble Apex Court has specifically observed that the matter is not fit to be remanded in routine manner if the same causes serious prejudice to the pensioner while dealing with the factual aspect of the said case which has been observed at paragraph 21 which is being referred herein:-

“21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.”

27. The law which has been laid down in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) by the Hon'ble Apex Court that consecutive enquiry is not permissible and after having been clarified by Hon'ble Apex Court that in such situation where the enquiry officer has not found the charge proved then what remedy is available to the delinquent employee has been explained and, as such, it is not that the law is not there or power is not available with the disciplinary authority but even then, the disciplinary authority, in the fact of the present case, as has been admitted, that they had directed the enquiry officer to submit the second report and even in the second report the charge has not been found to be proved.

28. But, even then the recourse which was available to the disciplinary authority has not been taken as per the judgment rendered in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) and straightaway second show cause notice has been issued on the basis of the enquiry report submitted by the enquiry officer twice and sought for explanation as to why 10% amount of pension be not deducted for five years in exercise of power conferred under Rule 43(b) of the Jharkhand Pension Rules, 2000.

29. Although the writ petitioner has replied to the show cause denying the allegations but the impugned order has been passed.

30. It is admitted case as per the document appended to the paper book, as available at page 82, letter No.4234 dated 18.10.2022, which is by way of second show cause notice asking the petitioner to submit the reply within 15 days as to why 10% amount of pension for five years be not withheld.

31. We have gone through the content of the said second show cause notice dated 18.10.2022 wherein it has been referred in the very first paragraph that in

the enquiry officer has not found the charge to be proved but very surprisingly in the second paragraph it has been referred that the writ petitioner has been found to be guilty.

32. This Court is very much surprised that when the enquiry officer has not found the charge proved then from where it has come in the aforesaid second show cause notice dated 18.10.2022 referring therein that the writ petitioner has been found to be guilty, for ready reference the content of the said second show cause notice, although in Hindi, but it is being referred herein in order to assess the mind said to be applied by the disciplinary authority :-

33. It is thus evident from the content of the second show cause notice dated 18.10.2022, as referred hereinabove, that no endeavour has been taken to differ with the finding recorded by the enquiry officer showing the reason of the disciplinary authority and, as such, no occasion has been made available to provide an opportunity to the delinquent employee to give his objection on the difference of opinion.

34. Therefore, the law as has been laid down in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) followed in Lav Nigam v. Chairman & MD, ITI Ltd. & Another (Supra) has clearly been flouted by the disciplinary authority.

35. Now the question is that when the law is already there and if the disciplinary authority has not followed, then will it be proper for this Court to remit the matter for the purpose of fulfilling the lacunae.

36. This Court is of the view that such indulgence cannot be granted to the State, rather, if such indulgence will be granted then the same will cause serious prejudice to the delinquent employee who has been relegated to the disciplinary authority from the year 2019 and he has retired on 30.11.2019 and since then we have already crossed about more than six years and, as such, after lapse of six years, remitting the matter before the disciplinary authority will certainly cause serious prejudice to the delinquent employee.

37. This Court, after considering the factual aspect along with the judgment rendered by Hon'ble Apex Court, as referred hereinabove, and advertent to the finding recorded by the learned Single Judge in the impugned order, is of the view that the learned Single Judge since has proceeded on the premise of the settled position of law as has been laid down by Hon'ble Apex Court in the case of Punjab National Bank & Others Vs. Kunj Behari Misra (Supra) followed in Lav Nigam v. Chairman & MD, ITI Ltd. & Another (Supra) and considering the applicability of the ratio of the judgment rendered in the said cases having found to be available in the facts of the present case, the learned Single Judge has quashed and set aside the impugned order, which according to our considered view, cannot be said to suffer from an error.

38. Accordingly, the instant appeal fails and is dismissed.

39. Pending interlocutory applications, if any, also stand disposed of.