

(2024) 10 JH CK 0080

Jharkhand High Court

Case No: Writ Petition (S) No. 6699 Of 2023

Prem Sahu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 14, 2024

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

Bench: Single Bench

Advocate: Saurav Arun, K.K. Singh

Final Decision: Disposed Of

Judgement

Dr. S. N. Pathak, J

1. The petitioner has challenged the decision contained in office order dated 14.11.2023 (Annexure-19), by which he has been dismissed from service, as he obtained the appointment and promotion illegally.

2. Briefly stated, the petitioner was appointed as Driver against the sanctioned and vacant post. The service of the petitioner was regularized on the recommendation of the Deputy Commissioner, Chatra vide order dated 27.07.1992. Thereafter, the petitioner was promoted to the post of Clerk on

03.02.1997, but the same was cancelled by order dated 19.7.1999 on the ground that the petitioner's appointment was illegal. The said cancellation

order was subject matter of challenge in C.W.J.C. No. 3740 of 1997 (R), which was disposed of vide order dated 19.07.1999. Thereafter, the

promotion of the petitioner was restored and he was getting salary regularly. On a complaint made by one Awadesh Singh on

10.09.2022 regarding illegality in the appointment of the petitioner and others, the service of the petitioner was dismissed upon an enquiry conducted

by the authorities. The order of dismissal is under challenge in the instant writ petition.

3. Mr. Saurav Arun, learned counsel appearing for the petitioner submits that the impugned order of dismissal is wholly bad in the eyes of law, as the petitioner was dismissed in a namesake departmental proceeding. Learned counsel further submits that the very charge-sheet has not been served to the petitioner which goes to prove that the petitioner was dismissed without any charge. Even no show cause notice was issued and without examination of any witness or any document, the petitioner was dismissed. Learned counsel further submits that even the so-called enquiry report has never been served to the petitioner, which deprived the petitioner to defend himself before passing the dismissal order. Learned counsel further submits that in view of these serious lacuna and flaw in conducting the departmental proceeding, the order of dismissal can very well be termed to be non est in the eyes of law and the same should be quashed and set aside by this Court and the petitioner is fit to be reinstated in service with full consequential benefits.

4. Mr. K.K. Singh, learned counsel appearing for the respondents submits that admittedly the enquiry was conducted against the petitioner for his illegal appointment as he was found to be illegally appointed and as such, he was rightly dismissed from service. Justifying the impugned order, learned counsel submits that any illegal or irregular appointment cannot be allowed to be continued and therefore, after due enquiry, the service of the petitioner was found to be illegal and consequently, he has been dismissed from service.

5. Having heard the learned counsel for the parties and upon perusal of the records, it appears that an enquiry was conducted which proved the illegality in the appointment of the petitioner. However, the enquiry was conducted against the settled norms as laid down in plethora of judgments rendered by the Honâ€™ble Apex Court as well as by this Court, as also against the Rule, which governs the field of service conditions of the petitioner. It is well settled that whenever the disciplinary authority proposes to hold an enquiry, a definite and distinct charge on the basis of allegation

shall be communicated to the delinquent who shall be required to submit reply within specified time. On receipt of the reply, an enquiry may be held.

Thereafter, the enquiry officer shall prepare a report on the basis of articles of charge and the statement of witnesses and evidences in respect of

each of the charges and on the findings of the enquiry officer, the disciplinary authority may punish the delinquent appropriately or exonerate from the

charges. The exhaustive procedure has been lucidly explained by the Hon^{ble} Apex Court in the case of Punjab National Bank v. Kunj Behari

Misra, (1998) 7 SCC 84. The relevant paragraph-10 is more useful to be quoted in extenso:-

“10. Before dealing with the rival contentions, it will be appropriate to refer to the relevant Regulations. Regulation 4 of the Regulations sets out the minor

and the major penalties which may be imposed on an officer employee for acts of misconduct or for any other good and sufficient reason. The procedure for

imposing the minor penalties is set out in Regulation 8. It provides that where it is proposed to impose such a penalty, the employee concerned has to be informed

in writing of the imputations of lapses against him and an opportunity is given to him to submit his written statement. Regulation 8(2) provides that where the

disciplinary authority is satisfied that an enquiry is necessary, then it shall follow the procedure for imposing a major penalty as laid down in Regulation 6.

Regulation 6, to the extent it is relevant in the present case, reads as follows:

“6. Procedure for imposing major penalties.”(1) xxxxx

(2) Whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct or misbehaviour

against an officer employee, it may itself enquire into or appoint any other public servant (hereinafter referred to as the enquiring authority) to enquire into the

truth thereof.

Explanation. “When the disciplinary authority itself holds the enquiry, any reference in sub-regulation (8) to sub-regulation (21) to the enquiring authority

shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an enquiry, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the officer

employee and the articles of charge, together with a statement of the allegations on which they are based, shall be communicated in writing to the officer

employee who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 15 days), or within such extended time as may be granted by the said authority, a written statement of his defence.

(4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the disciplinary authority itself, or if it considers it necessary so to do, appoint under sub-regulation (2) an enquiring authority for the purpose:

Provided that it may not be necessary to hold an enquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(21)(i) On the conclusion of the enquiry the enquiring authority shall prepare a report which shall contain the following:

- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a gist of the defence of the officer employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

Explanation.â€"If, in the opinion of the enquiring authority, the proceedings of the enquiry establish any article of charge different from the original article of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The enquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of enquiry which shall include:

- (a) the report of the enquiry prepared by it under clause (i);
- (b) the written statement of defence, if any, submitted by the officer employee referred to in sub-regulation (15);
- (c) the oral and documentary evidence produced in the course of the enquiry;
- (d) written briefs referred to in sub-regulation (18), if any; and

(e) the orders, if any, made by the disciplinary authority and the enquiring authority in regard to the enquiry.â€

What action has to be taken on the submission of the enquiry report is provided by Regulation 7 which reads as follows:

â€7. Action on the enquiry report.â€(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing,

remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry

according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement

and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in

Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an

order exonerating the officer employee concerned.â€

A bare reading of the above Regulations shows that on furnishing of the charge-sheet, full opportunity is required to be given to the delinquent officer to prove his

innocence. This is a case where the disciplinary authority decided that procedure contained in Regulation 6 be followed. Under Regulation 6(2), the disciplinary

authority, instead of conducting the enquiry itself, chose to appoint another person as the â€enquiring authorityâ€ to enquire into the imputations of

misconduct. On the conclusion of the proceedings in the manner provided by Regulation 6, the enquiring authority has to forward its report to the disciplinary

authority along with all relevant records. The said report has to contain the enquiring authority's findings on each of the charges framed against the delinquent

officer. According to sub-regulation (3) of Regulation 7, the disciplinary authority, having regard to the findings on all or any of the articles of charge, imposes

any of the penalties specified in Regulation

4. This obviously implies that where the enquiring authority has found all or any of the charges proved against the delinquent officer and the disciplinary

authority agrees with the said findings, then it can proceed to impose any of the penalties specified in the said Regulation.â€

6. In the instant case, learned counsel appearing for the respondents categorially submits that charge-sheet has been framed. But, it is a fact that no

charge-sheet has been served to the petitioner. No witness was examined and no document has been proved in the entire departmental proceeding.

Even the complainant has not come forward to support the allegation levelled against the petitioner. No opportunity was afforded to the petitioner in

the entire departmental proceeding, which violates the cardinal principle of natural justice. No enquiry report was ever served to the petitioner.

7. On the face of those lacunae in the entire departmental proceeding, it can comfortably be inferred that the said proceeding is a sham proceeding

and it has been done just to remove the petitioner from service. The present proceeding, if any, has no legs to stand and the same is hereby quashed

and set aside.

8. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, the impugned order dated 14.11.2023 is hereby quashed

and set aside. The respondents are directed to reinstate the petitioner with all consequential benefits. However, liberty is reserved with the

respondents, if they so desire, to proceed against the petitioner departmentally in accordance with law after following the cardinal principle of natural

justice.

9. With the aforesaid observations and directions, this writ petition stands disposed of.