

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No.5193 of 2017

Baban Sharma, Son of Shri Nagina Mistri @ Nagina, at present in Rly. Qtr. No.S-53 B-Type II, S.E. Railway Colony, Ranchi, P.O-Chutia, P.S-Chutia, Dist-Ranchi (Jharkhand) **Petitioner**

Versus

1. Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Chief Vigilance Officer, S.E. Railway, Garden Reach, Kolkata-43.
3. Coaching Depot Hatia and Disciplinary Authority, S.E. Railway, P.O & P.S-Chutia, Ranchi.
4. Sr. Divisional Accounts Officer, S.E. Railway, Adra Division, P.O & P.S-Purulia, District-Purulia (W.B).
5. Divisional Railway Manager, Ranchi Division, S.E. Railway, Ranchi-834001(Jharkhand).
6. Sr. Divisional Mechanical Engineer, S.E. Railway, Ranchi Division, Ranchi-834001 (Jharkhand)

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Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA**

For the Petitioner : Mrs. M.M. Pal, Sr. Advocate
Ms. Manjusri Patra, Advocate
Mrs. Mahua Palit, Advocate

For the Respondents : Mrs. Bakshi Vibha, CGC

C.A.V on 23.07.2026

Pronounced on 27/08/2026

Per Sujit Narayan Prasad, J.

1. The instant writ petition under Article 226 of the Constitution of India has been preferred seeking quashing the order dated 17.05.2017 passed by the learned CAT, Circuit Bench at Ranchi in OA No.051/00205/2015 (Annexure-16) whereby and whereunder the OA so filed by the petitioner against the punishment order dated 13.02.2015 and the appellate order dated 28.07.2015 has been dismissed and for a direction on the

respondents to reinstate the petitioner in his service with full back wages and with all consequential benefits.

2. The brief facts of the case as per the impugned order and the pleadings made in the writ petition which require to be enumerated reads as under:

- (i) The petitioner was initially appointed as Ty Shed Khalasi in S.E. Eastern Railway on 08.12.1980 and was posted at Carriage shed BKSC, S.E. Railway and his service was regularized on 17.01.1984.
- (ii) The father of the employee, namely, Nagina, Ex.- B/Smith GR.I W/s, Adra Division made an application dated 18.08.1980 to the Divisional Mech. Engineer, Adra for appointment of his son (the petitioner) and on his application the petitioner was appointed in the service.
- (iii) At the time of appointment, the applicant was possessing adequate qualification and had furnished relevant documents before the respondents, including his school Certificate leaving/transfer certificate dated 15.10.1979 issued by the Headmaster of Sri Gautam Uchcha Vidyalaya, Sonvarsha, Bhojpur on 6.3.2006.
- (iv) When the applicant was posted as Blacksmith Grade II in the office of Senior Section Engineer (C&W), Hatia, S.E. Railway, a charge-sheet was issued to him by the Disciplinary Authority alleging therein

that he had submitted a false certificate in respect of his date of birth as well as educational qualification, and had also given changed name of his father with mala fide intention for securing employment.

- (v) After receipt of charge-sheet, the applicant submitted his reply (show-cause) denying the charge levelled against him stating therein that the charge is false and baseless and based on anonymous complaint made by one Shri Kamla Kant Sharma, which complaint petition was not supplied to him.
- (vi) After receipt of charge-sheet, the applicant submitted his show-cause dated 17.03.2006 denying the charge levelled against him, and stating therein that the charge is false and baseless and based on anonymous complaint made by one Shri Kamla Kant Sharma, which complaint petition was not supplied to him.
- (vii) In his reply, the petitioner made a request before the disciplinary authority to supply the following documents which was urgently required to defend his case:
 - (I) Copy of original report from which the case has been arisen;
 - (II) Copy of service book in all pages;
 - (III) Copy of Medical Certificate,
 - (IV) Copy of Police Verification which was made after his employment;
 - (V) Copy of petitioner's Transfer Certificate issued by the concerned School authority, i.e., Headmaster/Headmistress;

- (VI) Copy of original declaration of late Nagina, Ex-B/Smith WRS/Adra.
- (viii) It is stated that in charge-sheet also there is no averment in respect of the anonymous complaint made by Shri Kamla Kant Sharma. Thereafter, the applicant through several representations demanded the relevant documents from the respondents but the respondents did not supply the same, and the Inquiry Officer to conduct inquiry in respect of charge memo was appointed and thereafter the Inquiry Officer illegally and without supplying copy of the documents to the applicant brought certain documents on record as Exhibit-P/1 to P/6.
- (ix) During inquiry, neither the complainant-Kamla Kant Sharma, nor any other witness was examined by the prosecution, and so the petitioner had no opportunity to cross-examine the complainant, and other witnesses which has caused serious prejudice to the petitioner.
- (x) The inquiry was conducted in a haphazard manner and the inquiry officer submitted his report without giving proper opportunity to the petitioner to examine the defence witnesses.
- (xi) It is stated that the Inquiry Officer did not properly examine the defence statement submitted by the applicant with regard to his educational qualification as well as the name of his father, and wrongly

placed reliance upon the statement of the applicant dated 23rd August, 2005 made before the Vigilance Department, S.E. Railway, which was recorded under threat and when the applicant was not in a proper state of mind.

- (xii) The inquiry officer held him guilty on the basis of the School Leaving Certificate (SLC) issued by the concerned school authority, i.e., headmaster who has also not been examined and, thus, the charges cannot be said to be proved and no punishment can be imposed on the basis of such perfunctory inquiry report.
- (xiii) Further case of the petitioner is that the Disciplinary Authority, on the basis of inquiry report, passed illegal order of removal of the applicant from service on 25.9.2008 and the Appellate Authority also confirmed the said illegal order of the Disciplinary Authority vide order dated 18.3.2009.
- (xiv) Thereafter, the petitioner moved before the learned CAT by preferring O.A No.138 of 2009 (R) against the removal order dated 25.09.2008 as also the appellate order dated 18.03.2009 which was allowed by a detailed judgment dated 01.08.2011 where the removal order dated 25.09.2008 passed by the Disciplinary Authority and the appellate order dated 18.03.2009 passed by the Appellate Authority were

quashed and set aside directing the respondent authority to reinstate the petitioner in service with immediate effect and to pay all consequential benefits to him, however, with a liberty to conduct a de-novo inquiry against the petitioner in accordance with law with respect of charge memo dated 06.03.2006.

(xv) Being aggrieved, the respondent-authority moved before this Court by filing a writ petition being W.P(S) No.715 of 2012 which was also dismissed vide order dated 09.01.2013 and a direction was issued to implement the order passed by the learned CAT without any delay.

(xvi) The petitioner was reinstated in his service with all consequential benefits vide order dated 30.05.2013 and immediately thereafter a de-novo inquiry was conducted against him vide order dated 30.05.2013 in connection with the major penalty charge sheet dated 06.03.2006.

(xvii) The petitioner appeared in the inquiry proceeding and vide his representation dated 03.01.2014 he made request before the inquiry officer to produce the complainant for examination and to supply the following additional documents as referred above.

(xviii) In reply to his representation dated 03.01.2014 the inquiry officer informed the petitioner vide its letter

dated 31.03.2014 that to call upon the complainant for his examination is not allowed. It was also informed that the supply of additional/defence documents cannot be supplied as the same is not available/traceable except his service book.

- (xix) Thereafter, the petitioner approached before the learned CAT by preferring O.A No.051/ 00116 / 2014(R) to drop the said de-novo inquiry but the same was dismissed at the admission stage itself being pre-mature with a liberty to the petitioner to approach the learned Tribunal afresh with such grounds.
- (xx) The respondent-authority without awaiting the outcome of the said OA has concluded the departmental inquiry and submitted a report dated 26.09.2014 against the petitioner without examining the so-called complainant and the headmaster of the concerned school.
- (xxi) The petitioner has made representation dated 22.11.2014 specifically stating therein that the inquiry is not fair and proper. It was specifically stated that the alleged pre-recorded statement dated 23.08.2005 made before the Vigilance Department was recorded under threat as he was not in a proper state of mind.

(xxii) Thereafter, the disciplinary authority has passed the punishment order dated 13.02.2015 whereby and whereunder he has been removed from his service with immediate effect.

(xxiii) The petitioner approached the appellate authority vide his appeal dated 27.03.2015 raising all his grievances but the said appeal was also rejected vide order dated 28.07.2015.

(xxiv) Thereafter the petitioner has challenged the disciplinary order dated 13.02.2015 and appellate order dated 28.07.2015 by filing O.A being O.A No.051/00205/2015 which was also dismissed vide order dated 17.05.2017.

3. Being aggrieved, the petitioner has approached this Court by way of filing the instant writ petition.

4. It is evident from the factual aspect that the petitioner/applicant while in service working as Black Smith, Gr.II has been proceeded by initiating a departmental proceeding which finally culminating into the order of removal from service vide order dated 13.02.2015. The order of removal from service has been challenged by the applicant by filing an appeal before the appellate authority which was also dismissed vide order 28.07.2015. Thereafter the petitioner has approached the learned CAT for quashing and setting aside the order dated 13.02.2015 passed by the disciplinary authority and the order dated 28.07.2015 passed by the appellate authority but was dismissed vide order

dated 17.05.2017 by the learned Tribunal, which is the subject matter of the present writ petition.

Submission of the learned counsel for the writ-petitioner:

5. The learned senior counsel appearing for the writ petitioner-delinquent employee has taken the following grounds:

- (i) The complainant has not been examined which caused serious prejudice;
- (ii) The documents have not been exhibited by calling upon the witnesses in course of inquiry which violates the principle of natural justice, and
- (iii) The very basis of the removal from service was due to the certificate given by the Principal of Gautam Uchha Vidyalaya, Bhojpur, the content thereof has not been proved by the author of the said certificate/letter, i.e, the headmaster and the same has been taken as a piece of evidence only on the basis of the averment of one K.K. Ganguly, CVI(A/Cs), Vigilance Wing of the authority who has been authorized to investigate the matter is not proper and it may be liable to be quashed and set aside;
- (iv) It is further submitted that the applicant/petitioner in his defence statement had categorically denied the allegation and had fully explained that his clarificatory statement was recorded by the Vigilance Branch under threat and coercion. The fact is that the applicant/petitioner was compelled to put his signature on the said clarificatory statement, which

cannot be used against him unless it is brought on record in accordance with law;

- (v) The Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short, the Rule of 1968) has not been followed which provides all procedure to be followed including the documents which are to be exhibited by the witnesses to be produced by the Establishment/authority concerned.

6. In support of her contention, the learned senior counsel has relied upon the following judgments:

- (i) ***“Roop Singh Negi v. Punjab National Bank & Ors.”***
(2009) 2 SCC 570; and
- (ii) ***“Commissioner of Police, Delhi & Ors. v. Jai Bhagwan:,***
(2011) 6 SCC 376

Submission of the learned counsel for the respondents:

7. While on the other hand, Mrs. Bakshi Vibha, the learned CGC has taken the following grounds:

- (i) There is no need for interference in the impugned orders, since, all opportunities have been granted to the writ petitioner in the *de- novo* inquiry;
- (ii) Even though the complainant has not been examined but the certificate which has been said to be issued by the concerned school on verification has been found to be fake and forged as it was not issued by the said school authority which has been brought to the notice of the

inquiry officer by K.K. Ganguli, the then CVI(A/Cs) as a Court witness who has been declined to cross examine by the petitioner;

- (iii) It has been contended that it is incorrect on the part of the petitioner/applicant that the relevant documents have not been supplied to him, rather his service book, copy of medical certificate and copy of the family declaration of late Nagina, Ex-B/Smith WRS/Adra were supplied to him;

8. The learned counsel, based upon the aforesaid ground, has submitted that the order of the disciplinary authority dated 13.02.2015, order of the appellate authority dated 28.07.2015 and the order dated 17.05.2017 passed by the learned Tribunal need no interference.

Analysis:

9. We have heard the learned counsel for the parties and gone through the pleadings made in the instant writ petition as also the findings recorded by the learned Tribunal in the impugned order.

10. This Court is now proceeding to examine the legality and propriety of the impugned order in the admitted premises of the fact that the respondent-applicant has been proceeded departmentally by initiating a departmental proceeding which culminating into the order of removal from service as would be evident from the orders passed by the authority in this regard.

11. This Court, before appreciating the argument advanced on behalf of the writ petitioner and respondent as also the legality and propriety of the impugned order, thinks it proper to first refer about the jurisdiction which is to be exercised under Article 226 of the Constitution of India as has been held by the Hon'ble Apex Court in its Constitution Bench judgment rendered in the case of “ **L. Chandra Kumar v. Union of India and Ors.**”, (1997) 3 SCC 261, relevant paragraph-99 thereof is quoted hereunder as:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323- A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by

overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

12. It is evident from the ratio laid down therein that the power of judicial review has been deliberated by the Hon'ble Apex Court, which is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

13. The Hon'ble Apex Court in the case of “***West Bengal Central School Service Commission vs. Abdul Halim***”, (2019) 18 SCC 39, has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the order impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . ---."

14. In the case of *T.C. Basappa vs. T. Nagappa and Anr.*, (1955) 1 SCR 250, their Lordships have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

"11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

15. This Court is now proceeding to examine as to whether the order passed by the learned Tribunal either suffers from the element of having error on the face of the order or without jurisdiction or suffers from perversity.

16. This Court has gone into both the inquiry reports. The first inquiry report dated 31.12.2007 which has been held to be perverse and based upon that the order of removal which has been passed by the disciplinary authority had been quashed by the learned Tribunal vide its order dated 01.08.2011 passed in O.A No.138 of 2009 (R) with a direction to reinstate the applicant/petitioner in service with immediate effect and pay all consequential benefits to him. However, the liberty is granted to the authority to conduct a de-novo inquiry and pass a fresh order in accordance with law.

17. Being aggrieved, the respondent-authority had moved before this Court by filing W.P(S) No.715 of 2012 which was also dismissed vide order dated 09.01.2013.

18. Thereafter, the de-novo inquiry has been conducted as per the inquiry report available in Annexure-12.

19. This Court has gone through the said inquiry report and found that the complainant was not examined in the earlier proceeding and in the de-novo inquiry also the complainant has not been brought to cross examine by the petitioner.

20. It is also admission on the part of the disciplinary authority as per the inquiry report that the headmaster who had issued the certificate/letter with regard to non-issuance of any certificate in favour of the petitioner has also not been called upon for cross-examination or even for exhibiting the said document.

21. It is also admitted fact that one K.K. Ganguly, the then C.V.I. (A/Cs) posted in the Vigilance Wing of the respondent authority, had verified and got a certificate/letter from the headmaster stating therein that no such certificate has been issued in favour of the petitioner showing the proof of studying in the said school.

22. It needs to refer herein that the respondent has formulated the Railway Servants (Discipline and Appeal) Rules, 1968 wherein the detail procedure of initiating the proceeding and inflicting punishment has been provided under Rule 9, for ready reference the Rule 9 is being referred hereunder as:

“9. Procedure for imposing Major Penalties -It is evident from the provision of Rule 9 that adequate and sufficient

opportunity is to be provided to the delinquent employee. It has also been provided therein that if any document is being relied upon the disciplinary authority or the inquiry officer contained thereof is strictly to be proved by the authority at the time of marking exhibits.

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, a Board of Inquiry or other authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Railway Services (Conduct) Rules, 1966, the Complaints Committee established for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

(3) Where a Board of Inquiry is appointed under sub-rule (2) it shall consist of not less than two members, each of whom shall be higher in rank than the Railway servant against whom the inquiry is being held and none of whom shall be subordinate to the other member or members as the case may be, of such Board.

(4) Where the Board of Inquiry consists of two or more than two members, the senior member shall be the Presiding Officer.

(5) Every decision of the Board of Inquiry shall be passed by majority of votes, and where there is an equality of votes on the findings, the finding of each member shall be incorporated in the report prepared under clause (i) of sub-rule (25).

Explanation - Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (12) and in sub-rules (14) to (25), to the inquiring authority shall be construed as a reference to the disciplinary authority.

(6) Where it is proposed to hold an inquiry against a Railway servant under this rule and Rule 10, the

disciplinary authority shall draw up or cause to be drawn up –

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain –

(a) a statement of all relevant facts including any admission or confession made by the Railway servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The disciplinary authority shall deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Railway servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.

***Note:** - If copies of documents have not been delivered to the Railway servant along with the articles of charge and if he desires to inspect the same for the preparation of his defence, he may do so, within 10 days from the date of receipt of the articles of charge by him and complete inspection within ten days thereafter and shall state whether he desires to be heard in person.*

(8) The Railway servant may, for the purpose of his defence submit with the written statement of his defence, a list of witnesses to be examined on his behalf.

***Note:** - If the Railway servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (6), the disciplinary authority shall furnish him with a copy each of such statement as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.*

(9) (a) (i) On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.

(ii) Where the disciplinary authority decides to proceed with the inquiry it may itself inquire into such of the articles of charge as are not admitted or appoint under sub-rule (2) a Board of Inquiry or other authority for the purpose.

(iii) Where all the articles of charge have been admitted by the Railway servant in his written statement of defence, the disciplinary authority shall record its findings on each charge, after taking such further evidence as it may think fit and shall act in the manner laid down in Rule 10.

(iv) If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11. Where the disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed.

(b) If no written statement of defence is submitted by the Railway servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose and also inform the Railway servant of such appointment.

(c) Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to be known as Presenting Officer to present on its behalf the case in support of the articles of charge.”

23. It is evident from the provision of Rule 9 that adequate and sufficient opportunity is to be provided to the delinquent employee. It is also provided therein that if the disciplinary authority or the inquiry officer relies upon any document, the contents thereof must be strictly proved by the authority at the time of marking exhibits.

24. Further, the general law is that if any proceeding has been initiated on the basis of a complaint, then the complainant is required to be examined mandatorily, reference in this regard be

made to the judgment of the Hon'ble Apex Court rendered in the case of ***Madhya Pradesh vs. Chintaman Sadashiva Waishampayan, 1060 SCC OnLine SC 82*** wherein at paragraph-11 it has been observed which reads as under:

“11. ... As Venkatarama Aiyar, J. has observed in Union of India v. T.R. Varma [(1958) SCR 499 at p. 507] “stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them”. It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Article 136 we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in Khem Chand v. Union of India [(1958) SCR 1080 at p. 1096] where this Court has emphasised the importance of giving an opportunity to the public officer defend himself by cross-examining the witnesses produced against him.”

25. Further, on fairness of inquiry, the Hon'ble Apex Court has propounded the proposition in the judgment rendered in the case of ***Union of India and ors. Vs. Gyan Chand Chattar*** reported in ***(2009)12 SCC 78***, wherein at para-35 it has been observed which reads as under:-

“...Enquiry has to be conducted fairly, objectively and not subjectively. ”..

26. Further in the case of ***State of U.P. and ors. vs Saroj Kumar Sinha***, reported in ***(2010) 2 SCC 772***, the Hon’ble Apex Court has held in paragraph-30, which reads as under: -

“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.”

27. Now adverting to the facts of the present case, it is admitted fact that the complainant has not been examined on the basis of which the entire proceeding has been initiated even though the same has specifically been pleaded but there is no finding to that effect by the learned Tribunal.

28. The heavy reliance has been placed by the disciplinary authority on the fakeness of the certificate which was said to be corroborated by the headmaster of the concerned school but the veracity of the content of the said letter/certificate has not been exhibited by the staff/headmaster of the concerned school who was the author, i.e., the headmaster of the concerned school and thereby the petitioner has been deprived of the opportunity to cross examine the headmaster of the concerned school.

29. Further, the aforesaid letter/certificate said to be issued by the headmaster of the concerned school has been taken in evidence

for its consideration for forming an opinion in support of proof of charge against the delinquent employee is only the version of one K.K. Ganguly, the then CVI, (A/Cs).

30. Further, it is evident from the factual aspect that the basis of inflicting punishment in the fact-finding inquiry as would be evident from the report of the Vigilance Wing and the said inquiry report, since, has been made basis and based upon that said K.K. Ganguly being the part of the Vigilance Wing of the establishment cannot be said to be an independent witness, rather it is highly prejudiced to have with the prejudiced mind to support the preliminary inquiry.

31. The law is well settled that the findings recorded by an inquiry officer in a fact-finding report are not for the purpose of establishing the petitioner's guilt, but are strictly intended to determine whether the allegations have a prima facie foundation for framing a charge, reference in this regard be made to the judgment of *Nirmala J. Jhala v. State of Gujarat* reported in **(2013) 4 SCC 301**, the relevant paragraph of the aforesaid judgment are being quoted as under:

42. A Constitution Bench of this Court in Amalendu Ghosh v. North Eastern Railway [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held *ex parte*, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

(emphasis added)

(See also *Govt. of India v. Tarak Nath Ghosh* [(1971) 1 SCC 734 : AIR 1971 SC 823. Ed. : See paras 10 to 14 thereof in SCC where the distinction between a preliminary and regular enquiry has been discussed. *Tarak Nath Ghosh* has however been overruled on other points in *P.R. Nayak v. Union of India*, (1972) 1 SCC 332 and *T.V. Nataraj v. State of Karnataka*, (1994) 2 SCC 32.] .)

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra* [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with

law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

(emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

32. This Court is conscious with the fact that in the disciplinary proceeding if the decision has been taken by the disciplinary authority, then the least interference is to be required in exercise of the power conferred under Article 226 of the Constitution of India.

33. It is equally well-settled law that although departmental proceedings are governed by the preponderance of probability, charges must be established through cogent evidence and in compliance with the principles of natural justice, reference in this regard may be made to the judgment of the Hon’ble Apex Court rendered in the case of ***State of Karnataka and Anr. vs. Umesh, reported in (2022) 6 SCC 563***, wherein, at paragraphs- 18 and 19 it has been held that mere on probabilities, no punishment can be imposed in the departmental proceeding. For ready reference, the same is being referred as under:-

“18. In the course of the submissions, the respondents placed reliance on the decision in Union of India v. Gyan Chand Chattar [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78]. In that case, six charges were framed against the respondent. One of the charges was that he demanded a commission of 1% for paying the railway staff. The enquiry officer found all the six charges proved. The disciplinary authority agreed with those findings and imposed the

punishment of reversion to a lower rank. Allowing the petition under Article 226 of the Constitution, the High Court observed that there was no evidence to hold that he was guilty of the charge of bribery since the witnesses only said that the motive/reason for not making the payment could be the expectation of a commission amount. The respondent placed reliance on the following passages from the decision : (SCC pp. 85 & 87, paras 21 & 31)

“21. Such a serious charge of corruption requires to be proved to the hilt as it brings both civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasicriminal nature was required to be proved beyond the shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

31. ... wherein it has been held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences.”

19. The observations in para 21 of Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78] are not the ratio decidendi of the case. These observations were made while discussing the judgment [Union of India v. Gyan Chand Chattar, 2002 SCC OnLine Guj 548] of the High Court. The ratio of the judgment emerges in the subsequent passages of the judgment, where the test of relevant material and compliance with natural justice as laid down in Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491] was reiterated : (Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78] , SCC p. 88, paras 35-36)

“35. ... an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures

and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

36. In fact, initiation of the enquiry against the respondent appears to be the outcome of anguish of superior officers as there had been an agitation by the railway staff demanding the payment of pay and allowances and they detained the train illegally and there has been too much hue and cry for several hours on the railway station. The enquiry officer has taken into consideration the nonexisting material and failed to consider the relevant material and finding of all facts recorded by him cannot be sustained in the eye of the law.” (emphasis supplied) On the charge of corruption, the Court observed in the above decision that there was no relevant material to sustain the conviction of the respondent since there was only hearsay evidence where the witnesses assumed that the motive for not paying the railway staff “could be” corruption. Therefore, the standard that was applied by the Court for determining the validity of the departmental proceedings was whether (i) there was relevant material for arriving at the finding; and (ii) the principles of natural justice were complied with.”

34. Further, in the case of ***High Court of Judicature at Bombay Vs. Uday Singh and others, reported in (1997) 5 SCC 129***, the law has been laid down that in the departmental proceeding the cogent evidence is required to be there for inflicting punishment. For ready reference, paragraph-10 is being referred as under:

“----- the doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct-----.”

35. Herein, in the entirety of the facts and circumstances the fact about non-examination of the complainant, no corroboration

of the said certificate issued by the headmaster of the school, i.e., its author, relying upon the fact-finding inquiry and non-examination of the complainant is the vital aspect of the matter which is to be considered for the purpose of fairness and transparent of the departmental inquiry which is mandatorily required. On the issue of non-examination of the complainant the Hon'ble Apex Court in the case of ***Commissioner of Police, Delhi Ors. Vs. Jai Bhagwan*** reported in (2011) 6 SCC 376 has observed which reads as under :

“16. .. Non-examination of the complainant and P.S. Narang during the departmental proceeding has denied the respondent of his right of cross- examination and thus caused violation of Rule 16(iii) of the Delhi Police (F&A) Rules, 1980.

17. In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence.”

36. This Court after having discussed the factual aspect as well as the legal aspect is now adverting to the order passed by the learned Tribunal and found therefrom the following infirmity:

- (i) Non-examination of the complainant has not been taken into consideration in the inquiry report, since, there is no finding to that effect;
- (ii) Reliance has been placed upon the certificate of the school said to be issued by the headmaster of the concerned school, but there is no consideration with respect to the fact that the content of the said letter which was to be proved by the headmaster of

the concerned school has not been called upon for its examination so as to have an opportunity to the writ petitioner to cross-examine him so as to follow the principle of natural justice;

- (iii) The certificate/letter said to be issued by the headmaster of the concerned school has been taken to be admitted for the purpose of framing the charge is based upon the evidence of K.K. Ganguly, the then CVI (A/Cs) in the Vigilance Wing of the establishment, who cannot be said to be the competent witness to prove the content of the letter/certificate said to be issued by the headmaster of the concerned school.

37. All these facts which are required to be followed mandatorily as per the judgments of the Hon'ble Apex Court, as referred hereinabove, have not been taken into consideration by the authority in right perspective.

38. This Court, based upon the finding recorded by the learned Tribunal as well as the authority concerned, is of the view that the said finding is perverse and without following the settled principle of law while passing the capital punishment of removal from service that too, after rendering 28 years of service by the petitioner.

39. Accordingly, the order dated 17.05.2017 passed by the learned Tribunal in O.A No.051/00205/2015 is hereby quashed and set aside.

40. Consequently, the order dated 13.02.2015 passed by the disciplinary authority and the order dated 28.07.2015 passed by the appellate authority are also quashed and set aside.

41. In the result, the instant writ petition stands allowed.

42. Consequence to follow.

43. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Sudhir
Dated:27/08/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 28/08/2026.