

**Ajay Kumar Vs. State of Jharkhand and Ors**

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**Court :** Jharkhand

**Decided On :** May-20-2016

**Appellant :** Ajay Kumar

**Respondent :** State of Jharkhand and Ors

**Advocate for Pet/Ap. :** Mr. A. K. Sahani

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3083 of 2010  
Ajay Kumar, son of Sri Ram Nagina Singh, resident of Saket Vihar, Harmu Housing Colony, P.O. & P.S: Argora, District-Ranchi. .... Petitioner Versus 1. The State of Jharkhand through Chief Secretary.

2. Secretary, Water Resources Department, Vishweshwaraiya Bhawan (Nepal House), Doranda, P.O. & P.S. Doranda, District-Ranchi. 3.Under Secretary, Water Resources Department, Vishweshwaraiya Bhawan (Nepal House), Doranda, P.O. & P.S. Doranda, District-Ranchi. ... Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : Mr. A. K. Sahani, Advocate For the Respondents : M/s Binod Singh, SC (L &C) & Pravin Kr. Rana, J.C to SC (L &C) ----- CAV on 18.03.2016 Pronounced on 20/05/ 2016 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has prayed for quashing of the order dated 03.09.2009 issued by respondent no.3 (Annexure-

4) imposing the punishment of censure for the year 2006-07, withholding of one increment with cumulative effect and depriving from salary for the period of suspension except subsistence allowance.

2. Bereft of unnecessary details, the facts as disclosed, in the writ application is that the petitioner was initially appointed on the post of Junior Engineer in Water Resources Department in the year 1987. In course of time, the petitioner was promoted to the post of Assistant Engineer in the year 2002 and after re-organisation of the States, the services of the petitioner were allocated to the present State of Bihar. Consequent thereupon, the petitioner joined as Assistant Engineer in Madhepur (Jhanjharpur) in the district of Madhubani. Vide order dated 17.03.2007, the petitioner was placed under suspension in contemplation of a departmental proceeding by the Water Resources Department, Government of Bihar. On similar set of allegations, other executive engineer, junior engineer (vigilance) and another junior engineer were also placed under suspension. On 18.06.2007, the petitioner was served with a charge sheet and the petitioner submitted his show cause. The departmental proceeding was initiated against the petitioner and other three engineers thereafter, by virtue of revision in the cadre division, the services of the petitioner were allocated to the State of Jharkhand and accordingly, on 01.07.2008 the petitioner joined on the post of Assistant Engineer in the office of Chief Engineer, Design, Master Planning & Hydrology, WRD, Ranchi. After allocation of the State of Jharkhand by resolution dated 20.10.2008, the petitioner was served with a fresh charge sheet containing four different charges and the petitioner submitted a detailed explanation in addition to the explanation submitted by him in response to earlier charge sheet. Superintending Engineer was appointed as enquiry officer to the charges levelled against the petitioner who submitted the inquiry report on 23.12.2008 and the same was forwarded to the respondent no.3 vide letter dated 23.12.2008 vide Annexure-3 to the writ application. The enquiry officer in its report mentions that none of the charges could be proved against the petitioner. Ultimately by impugned order dated 03.09.2009 issued under the signature of the respondent no.3 has been awarded with the following punishments:- (I) Censure for the year 2006-07, 3 (II) Withholding of one increment with cumulative effect and (III) He has been deprived from getting any salary except subsistence allowance during the period of

suspension vide Annexure-4 to the writ application. Being aggrieved by the impugned order of punishment the petitioner preferred an appeal before his excellency Governor.

3. Mr. A. K. Sahani, learned counsel for the petitioner submits that the petitioner has been exonerated from all the charges by the inquiry officer and the disciplinary authority has not given the reason for disagreement with the findings recorded by the inquiry officer and the petitioner ought to have been given opportunity for the reply to the reasons for disagreement but without giving any cogent reasons for disagreement the impugned order has been passed which is unlawful, unjust and violative of Articles 14 and 311(2) of the Constitution of India. In this respect, the learned counsel for the petitioner has referred to the decision reported in 2006 (9) SCC440 Learned counsel for the petitioner further submits similarly situated persons have been exonerated from the charges and the petitioner has been inflicted with major punishment. Since proceeding initiated against the executive engineer and one junior engineer by the Water Resources Department, Government of Bihar have been dropped vide notification dated 07.10.2009 and 08.10.2009 Annexure-6 and 6/1 to the writ application. In this respect, the petitioner has referred to a decision rendered by the Honble Apex Court in the case of Rajendra Yadav Vs. State of Madhya Pradesh and Others as reported in 2013 (2) JBCJ238SC.

4. Mr. Binod Singh, SC (L &C) learned counsel for the respondents being assisted by the Pravin Kr. Rana, J.C to SC (L &C) has reiterated the 4 submissions made in the counter-affidavit. Learned counsel for the State submits that after conducting departmental proceeding, the petitioner has been awarded minor punishment and in the case of second show cause is not asked for and the petitioner cannot claim for exoneration on the ground of decision taken by the State of Bihar in the cases of other persons.

5. After hearing learned counsel for the respective parties at length and having bestowed my consideration to the documents on records, I am of the considered view that the petitioner has been able to make out a case for interference due to reasons stated hereinbelow:- (i) On perusal of the impugned order of punishment,

there is no doubt or debate that second punishment in the impugned order is a major punishment, but as disclosed from the counter-affidavit, probably the State under mistaken notion that withholding increment with cumulative effect is a minor punishment. But, as per the decision of Hon'ble Apex Court withholding of increment with cumulative effect is a major punishment. Since, the impugned order being a major punishment, has been imposed without any opportunity being given to the petitioner to file second show cause reply, the same has been vitiated. (ii) On perusal of the Annexures-6 and 6/1 of the writ application, it appears that other co-delinquents, who were proceeded on the same set up of allegations basing on the inquiry report, the proceedings have been drooped by the State of Bihar and the petitioner being similarly situated, is entitled to the benefit of similar treatment. So far as parity in quantum of punishment among the delinquents is concerned, it would be profitable to refer to a decision rendered by the Honble Apex Court in the case of Rajendra Yadav Vs. State of Madhya 5 Pradesh and Others as reported in (2013) 3 SCC73 in particular paragraph 9, which is quoted herein below:

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

6. In view of the reasons stated in the foregoing paragraph, the impugned order of punishment dated 03.09.2009 vide Annexure-4 to the writ application being legally not sustainable, is hereby quashed and set aside and the matter is remitted to the disciplinary authority to start the de novo proceeding from the stage of issuance of second show cause notice, and conclude the proceeding as expeditiously preferably within a period of six months from the date of receipt or communication of order and after conclusion of the proceeding, pass appropriate orders in accordance with law.

7. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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