

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (S) No. 2450 of 2011

Sanjay Kumar, son of late Tarkeshwar Sharma, resident of Village- Kespa,
Post Office-Kespa, Police Station-Alipur, District- Gaya, Bihar.

... .. **Petitioner**

Versus

1. The State of Jharkhand
 2. The Director General of Police, Jharkhand, Ranchi
 3. The Inspector General of Police, South Chhotanagpur Region, Ranchi
 4. The Senior Superintendent of Police, Ranchi
 5. The Superintendent of Police, Hazaribagh
 6. The Superintended of Police, Chatra
 7. The State of Bihar through Director General of Police, Bihar, Patna
- **Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

12/13.05.2022

1. Heard Mr. Alok Anand, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Rahul Saboo, learned counsel appearing on behalf of the State of Jharkhand.
3. This writ petition was filed on 06.05.2011 with a prayer to quash the entire proceedings including the draft charge as contained in Memo No. 1365 dated 25.03.2011 issued by the respondent No. 4. The challenge was made alleging that the respondent-authorities have already made up their mind for imposing major punishment and the department proceedings was merely a formality. It was alleged in the writ petition that the authorities have acted without application of mind as the departmental proceeding was already initiated, but still the petitioner was being asked to file show cause reply stating that if no reply is filed, departmental proceedings will be initiated.
4. During the pendency of the writ petition, the departmental proceedings were concluded and the petitioner was dismissed. The appeal filed by the petitioner was also dismissed. On account of subsequent developments, the petitioner challenged the order of the disciplinary authority as well as the appellate authority by filing I.A. No. 221/2018 in the present case, which was allowed on 05.11.2018 and consequently, the entire

disciplinary proceedings including the order of the disciplinary authority as well as the appellate authority are under challenge in the present proceedings. In the present proceedings, the charge memo dated 25.03.2011 (Annexure-2); the order of dismissal dated 25.08.2014 (Annexure-11) and appellate order dated 15.06.2015 (Annexure-14) are under challenge.

Arguments of the petitioner

5. While referring to the foundational facts of this case, the learned counsel submits that the petitioner had participated in the selection process pursuant to advertisement published in the year 1988 and the petitioner was directed to appear for the physical test vide Roll No. 755 issued by the duly constituted Selection Board and after becoming successful in the physical test, the petitioner was directed to appear in the written test, in which also he was declared successful. The further fact as stated in para-6 of the writ petition is that the petitioner was appointed vide order dated 19.05.1995 as contained in Memo No. 1877 by the order of the Superintendent of Police, Hazaribagh vide order No. 563/95 mentioning that the petitioner was appointed to the post of constable in special circumstances on humanitarian ground.

6. The learned counsel has referred to the letter of appointment as contained in Annexure-1 to the writ petition, which admittedly does not refer to any advertisement or recruitment through advertisement, but it refers to appointment on humanitarian ground under special circumstances and on purely temporary basis.

7. The learned counsel further submits that thereafter, the petitioner was transferred from one place to another and suddenly, he was subjected to the aforesaid charge contained in Memo No. 1365 dated 25.03.2011.

8. The learned counsel for the petitioner has raised the following points to challenge the impugned proceedings and orders: -

- a. The learned counsel submits that the entire proceedings has taken place by a pre-determined mind, when seen in the light of the letter issued by higher authority, which indicated that the petitioner is to be dismissed after holding an enquiry. For this, the petitioner has referred to the letter of the Inspector General Of

Police, Ranchi contained in memo no. 176 dated 05.03.2011 addressed to the Superintendent of Police, Ranchi.

- b. Immediately after receiving the draft charge, the petitioner, by letter dated 29.04.2011, had requested for supply of the exhibits which was mentioned in the charge memo and had also issued various letters in connection with the supply of the exhibits of the charge memo and some other documents, which were required by the petitioner in order to file his show-cause reply. He has further submitted that during the pendency of this writ petition, the said documents were not provided to the petitioner and ultimately, the departmental proceeding was concluded and the enquiry report was submitted and the petitioner was held guilty in the enquiry proceedings.
- c. The learned counsel has also submitted that no second show cause was issued to the petitioner and the disciplinary authority passed the order of dismissal against the petitioner by holding that the appointment of the petitioner itself was illegal.
- d. The petitioner filed appeal raising the points of violation of principles of natural justice and also non-issuance of second show cause, but the appeal was also dismissed.
- e. The disciplinary authority has referred to Article 311 (2) (b) of the Constitution of India to punish the petitioner, although the said provision is not at all applicable, as the petitioner was subjected to regular departmental enquiry and it cannot be said that the petitioner was required to be dismissed without holding any enquiry. This aspect of the matter has not been taken care of by the appellate authority.
- f. The learned counsel submits that primarily the petitioner is challenging the entire departmental proceedings on account of violation of principles of natural justice and perversity.
- g. It is not in dispute that as per the appointment letter itself the petitioner was appointed on humanitarian ground and in order to justify his appointment on humanitarian ground, the learned counsel for the petitioner has referred to Rule 663 of Jharkhand Police Manual to submit that the Selection Committee has got the

power to relax the required parameters for good grounds and accordingly, the petitioner has been appointed by exercising such power, as humanitarian ground itself is a good ground.

h. The following judgments passed by the Hon'ble Supreme Court has been relied upon : -

- (i) *State of U.P. vs. Saroj Kumar Sinha, para 27, 29, 32, 33 to 36*
- (ii) *Jaswant Singh vs. State of Punjab Others, para 6*
- (iii) *Kuldeep Singh vs. The Commissioner of Police & Others, para 6, 8, 32, 42*
- (iv) *Nirmala J. Jhala vs. State of Gujarat & Others, para 19, 20, 21,22*
- (v) *Gian Chand and Brothers & Ors. vs. Rattan Lal, para 22, 23, 24*

Arguments of the Respondents

9. Learned counsel for the respondents, on the other hand, has vehemently opposed the prayer and submitted that the appointment of the petitioner on humanitarian ground cannot be sustained by referring to any provision of law including Rule 663 of the Police Manual. He also submits that finding has been arrived at by the enquiry officer on the basis of materials on record, that the petitioner was never declared successful by the Selection Committee and his appointment letter was subsequently issued on humanitarian ground. He submits that such finding is not under challenge and accordingly, on account of the aforesaid undisputed facts on record, the petitioner is not entitled to grant any relief by this Court.

10. The learned counsel has also submitted that even if it is assumed, though not admitted, that the required documents asked for by the petitioner were not supplied, then also there is no perversity as the enquiry officer did not record any conclusive finding with regard to any forgery or fraud, rather the enquiry officer simply recorded a finding that the appointment of the petitioner on the basis of "humanitarian ground" is not sustainable under any provision of law and this finding is based on materials on record and is an admitted fact even in the writ petition that the petitioner was appointed on "humanitarian ground".

Findings of this Court

11. The petitioner was issued draft memo of charge vide memo No. 1365 dated 25.03.2011, wherein it was alleged that the petitioner has been appointed on the basis of forged documents and further his appointment on humanitarian ground was illegal. The said allegation was based on a report submitted by one Inspector of Police and the enquiry itself was triggered by letter issued by the mother of the petitioner, namely, Ramuna Devi. The petitioner in the writ petition had taken contradictory stand, in as much as, on the one hand, the petitioner has claimed that he had participated in the selection process pursuant to advertisement of the year 1988 and was declared successful in the physical test and also in the written test and on the other hand, the petitioner has taken a stand that he was appointed vide order No. 563/95 dated 19.05.1995 issued by the Superintendent of Police, Hazaribagh in special circumstances on humanitarian ground.

12. The petitioner while challenging the entire proceedings has alleged violation of principles of natural justice by stating that, none of the documents mentioned as exhibits in the memo of charge and further some documents which were essential enabling him to put forth his best defence, were furnished to the petitioner. The further grievance in connection with violation of principles of natural justice is that the departmental witnesses were examined without supplying the essential documents to the petitioner and thereby depriving the petitioner from cross-examining the departmental witnesses. Further point on the violation of principles of natural justice is that major penalty of dismissal has been imposed upon the petitioner, but no second show cause notice along with copy of the enquiry report dated 08.02.2014 was ever furnished to the petitioner and these illegalities were neither considered by the enquiry officer nor by the disciplinary authority and nor by the appellate authority. The writ petitioner annexed the charge memo which contains a list of 11 documents and a list of 4 witnesses from the side of the department.

13. Upon perusal of the records of this case, it appears that the petitioner had submitted his show cause before the enquiry officer and the petitioner was twice given opportunity to give his defence statement which he did not give. The enquiry officer recorded in the report that altogether 3 witnesses

were examined and the witnesses exhibited the documents as Exhibit – 3, 5, 6, 7, 8 and 9. The document in connection with forged signature at exhibit-10 was not found in the record and repeated communications were made for getting the said document, but the same was not made available. The enquiry officer found that two exhibits i.e., 3 and 9 were relating to the petitioner and the other exhibits were not in relation to the recruitment of the petitioner. The enquiry report also contains a photocopy of candidate register of 1994, which revealed that the petitioner was appointed pursuant to a letter contained in Memo No. 2766/P dated 20.07.1994 on humanitarian ground.

14. During the enquiry proceeding, the petitioner had, *interalia*, submitted three documents; first is true copy of appointment letter No. 563/95, second is a copy of letter dated 24.09.1991 issued by the higher officer at Patna and third is letter dated 28.10.1989 again issued by the higher officer at Patna. Upon perusal of the said documents produced by the petitioner, the enquiry officer found that the selection board was appointed on 18.08.1889 to 20.08.1889 and the petitioner had participated in the selection process on 20.08.1989 and as per the master chart, his name was at serial No. 755, but he could not be selected on account of his less educational qualification and less height and was declared unsuccessful. The enquiry officer referred to certain page numbers to record that the petitioner was declared unsuccessful. The enquiry officer further recorded that the document produced by the petitioner i.e., appointment letter contains the signature of Ajay Bhatnagar, Superintendent of Police, Hazaribagh which clearly mentioned serial No. 4/94 dated 14.11.1194 and certain direction as contained in Memo No. 2766/P2 dated 20.07.1994 which reflects that the petitioner was appointed pursuant to letter dated 09.05.1995 on purely humanitarian ground and on temporary basis.

15. This Court finds that the enquiry officer recorded its findings on the basis of materials on record including those which were produced by the petitioner himself and which also forms part of the writ record i.e., the appointment letter as contained in Annexure-1 which reflects that the petitioner was appointed on humanitarian ground and in the writ petition filed by the petitioner also, the petitioner has clearly taken a stand that the petitioner was appointed on humanitarian ground. The enquiry report further reflects that there is no provision for appointment on humanitarian ground

once and the petitioner was declared unsuccessful in the selection process. The enquiry officer on this ground found the appointment of the petitioner illegal. The enquiry officer recorded that two allegations were made against the petitioner; one that he had made forged documents and forged orders for the purposes of appointment and second his appointment was illegal. The enquiry officer recorded that in absence of sufficient materials from the department, it was not possible to conclusively hold as to whether the orders were forged or not, but the enquiry officer also concluded that the appointment of the petitioner is illegal as there is no provision for appointment on humanitarian ground. Thus, the enquiry officer recorded a finding that the allegation of forgery and preparation of forged documents could not be proved against the petitioner on account of want of document, but the appointment of the petitioner on humanitarian ground was illegal as there is no such provision for appointment on humanitarian ground.

16. The foundational dates with regards to the departmental proceedings against the petitioner as is apparent from the materials on record are as under: -

- a. An enquiry was conducted with regards to the legality of the appointment of the petitioner as constable.
- b. Upon receipt of an adverse report, the Inspector General of Police, Ranchi issued letter contained in memo no. 176 dated 05.03.2011 addressed to the Superintendent of Police, Ranchi stating that a departmental proceeding be initiated against the petitioner for his removal from service and the head quarter be also informed about the action.
- c. Petitioner was served with charge memo no. 1365 dated 25.03.2011 (Annexure-2) issued by the Superintendent of Police, Ranchi (Respondent No. 4) mentioning about initiation of departmental proceedings. The charge memo mentioned 11 exhibits and 4 witnesses. As per the charge, the petitioner had obtained appointment on the basis of forged documents and was illegally appointed by citing humanitarian grounds. It was mentioned in the charge memo itself that there is no provision for appointment in police force on humanitarian ground. The charge memo also mentioned about letter of Ramuna Devi, which appears

to have triggered the preliminary enquiry regarding illegal appointment of the petitioner.

- d. Vide letter no. 1914 dated 25.04.2011, One police officer posted in Hatia, namely, Rajiv Ranjan was appointed as the enquiry officer.
- e. On 29.04.2011, the petitioner requested the Respondent no.4 for supply of the exhibits which was mentioned in the charge memo and had also issued various letters in connection with the supply of the exhibits of the charge memo and some other documents, which were required by the petitioner in order to file his show-cause reply.
- f. On 06.05.2011, the petitioner filed the writ petition before this court challenging the charge memo dated no. 1365 dated 25.03.2011 (Annexure-2) alleging that the same was issued with a per-determined mind. In the writ petition the petitioner mentioned in para 15 that the departmental proceedings have been initiated but there was no mention about the aforesaid letter dated 29.04.2011 filed by the petitioner before the Respondent no.4 asking for the documents.
- g. Since the departmental proceedings had already commenced, the petitioner filed another letter on 04.08.2011 addressed to the enquiry officer asking for the documents referred to in the charge memo and also asking for 16 more documents so that he could defend himself.
- h. Vide letter dated 15.07.2013, the enquiry officer requested the authority at Ranchi that the petitioner has been asking for certain documents and requested for the documents. The enquiry officer vide letter dated 25.07.2013 requested the authority at Ranchi to send the exhibit -11, the applicant Ramuna Devi by stating that the same was not found in the records. Vide letter dated 07.08.2013, the enquiry officer again requested the authority at Ranchi that the petitioner has been asking for certain documents and requested for the documents and also stated that the deposition of the witnesses in the departmental proceedings was already recorded.

- i. Vide another letter dated 25.07.2013 requested the authority at Ranchi to the enquiry officer sought permission to send one Jyotish Kumar to Patna for examining the documents relating to appointment of the petitioner.
- j. The enquiry officer vide letter dated 09.08.2013 requested the authority at Chatra District to send the exhibit -11, the applicant Ramuna Devi by stating that the same was not found in the records. The Senior Superintendent of Police, Ranchi vide letter dated 29.10.2013 requested the authority at Chatra district to send the documents asked for by the petitioner. He also asked the authority to send exhibit -11 of the applicant Ramuna Devi by stating that the same was not found in the records. Similar letter was issued on 27.11.2013 to the authority at Chatra.
- k. It appears from the records of this case that the authorities took all steps to procure the documents asked for by the petitioner including exhibit -11 mentioned in the charge memo from authority at Ranchi, Chatra and the enquiry officer also took steps to send someone to Patna for verification of the documents. The communication was also made to the authority at Chatra because the petitioner was initially appointed in the district of Chatra.
- l. Subsequently, a letter dated 18.11.2013 (Annexure-8) was issued by the enquiry officer addressed to the petitioner. The perusal of this letter reveals that there was a change in the enquiry officer and the new enquiry officer communicated the petitioner that since the documents demanded were relating to his appointment so the same must be in his possession and enlisted 16 documents which according to the enquiry officer was in possession of the petitioner. The enquiry officer also fixed the next date as 04.12.2013 at 10.30 am for the petitioner to appear with all the documents failing which it was mentioned that the enquiry report will be prepared on the basis of materials on record.
- m. The new enquiry officer also took steps by writing letter dated 24.01.2014 addressed to the authority at Ranchi to provide exhibit -11 of the applicant -Ramuna Devi.

- n. It is important to note that after issuance of letter dated 18.11.2013 (Annexure-8) there is no further demand or communication or protest from the side of the petitioner with regards to demand or requirement of documents.
- o. In the enquiry report dated 08.02.2014 (Annexure-10) it has been recorded that the petitioner appeared before the enquiry officer with photocopy of certain documents including his appointment letter mentioned at serial no. 15 of the aforesaid letter dated 18.11.2013 (Annexure-8), which has also been annexed as annexure-1 to this writ petition and is an admitted document on record. The petitioner, *inter alia*, produced a copy of memo No. 4143 dated 28.10.1989 issued by the Superintendent of Police, Hazaribagh and also memo no. 359 dated 24.09.1991 issued by the Superintendent of Police, Hazaribagh before the enquiry officer.

17. The enquiry officer perused the documents submitted by the petitioner referred above and recorded findings that: -

- i. The petitioner had participated in the recruitment process conducted by the District Hazaribagh from 18.08.1989 to 20.08.1989 and master chart was also prepared and the petitioner stood at Serial No. 755.
- ii. The petitioner could not be selected on account of the fact that he was not matching with the educational qualification and height of the selected candidates and was declared unsuccessful.
- iii. The enquiry officer referred to the appointment letter produced by the petitioner (Annexure- 1 to this writ petition) and recorded that on face of the appointment letter, it was issued under the signature of Ajay Bhatnagar, the Superintendent of Police, Hazaribagh;
On the appointment letter itself, the candidate number 4 of 1994 dated 14.11.1994 has been mentioned and one letter of higher officials from Patna bearing Memo No. 2766/P-2 dated 20.07.1994 has also been mentioned on the appointment letter stating that the appointment letter was being issued in compliance of the direction issued in said Memo No. 2766/P-2 dated 20.07.1994 on “humanitarian ground”

and it was also mentioned that the appointment was completely temporary.

- iv. The appointment letter has been annexed as annexure- 1 to the writ petition and this court finds that the enquiry officer has not committed any error with regards to the contents of the appointment letter and no such dispute has been raised by the petitioner in this writ petition also. Rather the petitioner has taken inconsistent stand in the writ petition that he was successful in the selection process and was selected on “humanitarian ground”. In spite of repeated quire by this court, the learned counsel for the petitioner had no explanation to offer as to why the petitioner was required to be appointed on “humanitarian ground” when he was successful in the selection process itself.
- v. The enquiry officer recorded his finding that the petitioner failed to be successful in the selection process and thereafter, the petitioner was appointed under special circumstances on purely humanitarian ground under the instructions issued by authorities at Patna dated 20.07.1994. The enquiry officer recorded that there is no provision for appointment on “humanitarian ground”.
- vi. The enquiry officer further recorded that altogether two charges were framed against the petitioner – (i) the petitioner obtained appointment by preparing forged and fabricated documents, and (ii) the appointment of the petitioner was illegal.

With regards to the point No. (i), the enquiry officer declined to give any finding against the petitioner and recorded that the allegation regarding using forged and fabricated document for appointment can only be considered after obtaining the required documents as admittedly the required documents were not available with the enquiry officer to arrive at any finding on such serious allegation.

With regards to point No. (ii), the enquiry officer clearly recorded a finding that the appointment of the petitioner on “humanitarian ground” is illegal and thus, recorded a finding that the petitioner has been illegally appointed.

This is apart from the clear findings mentioned above that the petitioner had participated in the recruitment process conducted by the District Hazaribagh from 18.08.1989 to 20.08.1989 and master chart was also prepared and the petitioner stood at Serial No. 755 (not disputed by the petitioner);

But the petitioner could not be selected on account of the fact that he was not matching with the educational qualification and height of the selected candidate and was declared unsuccessful. This is being disputed by the petitioner but there is no explanation forthcoming even from the arguments of the learned counsel for the petitioner as to why the petitioner was appointed on “humanitarian ground” when he was declared successful.

Some important facts which transpires from the arguments advanced on behalf of the petitioner which have been recorded in order dated 28.03.2022, the day on which the arguments were concluded.

18. During the course of hearing, it is not in dispute from the side of the petitioner that the petitioner had participated in the departmental proceeding though it is the specific case of the petitioner that the required documents having not been supplied to the petitioner, no written statement as such was filed by the petitioner and by repeated letters demanded the documents. It is the further not in dispute from the side of the petitioner that the petitioner did not cross-examine any of the witnesses.

19. During the course of hearing of this case, the learned counsel for the petitioner has also placed the report of the enquiry officer, wherein it has been recorded that the petitioner had participated in the selection process, which was held on 20.08.1989 and thereafter, a master chart was prepared, but the petitioner was declared unsuccessful on account of his inappropriate educational qualification and that his height was not as per the candidate last selected. However, a letter contained in Memo No. 1877 dated 19.05.1995 was issued under the signature of Shree Ajay Bhatnagar, Superintendent of Police the petitioner was appointed under special circumstances on humanitarian ground on purely temporary basis. It further appears that the aforesaid documents which has already been referred to in the enquiry report

has also been referred to in Annexure-1, which is the appointment letter of the petitioner. The learned counsel has also referred to the enquiry report, wherein it has been ultimately recorded that there is no provision for appointment of a person on humanitarian ground and therefore, the enquiry officer was of the view that the appointment of the petitioner on humanitarian ground was illegal.

20. It is important to note that during the course of hearing, the learned counsel for the petitioner has nowhere disputed and no material or pleading has been pointed out to dispute that the petitioner had participated in the selection process and was declared unsuccessful. It is not in dispute that subsequently, the petitioner was appointed on humanitarian ground, which is the finding recorded by the enquiry officer. Rather, in order to justify his appointment on humanitarian ground, the learned counsel for the petitioner has referred to Rule 663 of Jharkhand Police Manual to submit that the Selection Committee has got the power to relax the required para-meters for good grounds and accordingly, the petitioner has been appointed by exercising such ground as humanitarian ground itself is a good ground. Further during the course of argument, it is not in dispute that the petitioner was not declared successful by the Selection Committee, rather he was appointed after having been declared unsuccessful in the selection process. The learned counsel has submitted that even post selection process, such exercise of granting appointment on humanitarian ground, could have been exercised.

21. During the course of hearing, repeated questions were put to the petitioner as to how he could reconcile between two distinct stands which have been taken by the petitioner in the writ petition; one is in para-5 that he was appointed after being successful in selection process of the year 1988 and the another that he was appointed on humanitarian ground on 19.05.1995. As already mentioned above, even the letter of appointment as contained in Annexure-1 clearly reflects his appointment on humanitarian ground.

A. Consideration of the arguments on the point of initiation of disciplinary proceedings with pre-conceived mind.

22. It is not in dispute that the draft memo of charge was issued to the petitioner was based on a report submitted by one Inspector General of

Police, alleging illegal appointment of the petitioner which in turn was alleged to have been triggered by the letter of Ramuna Devi, mother of the petitioner. In this back ground, the Inspector General of Police had simply stated that the petitioner was to be removed after conducting departmental enquiry. The communication cannot be seen as a dictation of the higher authority. Further, even the enquiry officer was not influenced by the said communication at all which is apparent from the fact that the entire allegation of fraud and forgery was brushed aside by the enquiry officer for want of documents and the enquiry officer recorded finding that the appointment of the petitioner was illegal as there is no provision for appointment on “humanitarian ground” which in turn was based on the face of the appointment letter itself produced by the petitioner before the enquiry officer. Thus, neither the department proceedings were initiated by a pre-conceived mind nor the letter issued by the higher authority constituting department enquiry had any influence on the department proceedings causing any prejudice to the petitioner.

23. Further, in the judgement passed by the Hon’ble Supreme Court reported in *(1999) 2 SCC 10 (Supra)*, the issue of bias of the enquiry officer has also been considered in paragraph 42 of the judgement wherein it has been held that the enquiry proceedings will be vitiated if the enquiry officer acts so arbitrarily and as a matter of course merely carrying out the command from some superior officer who perhaps directed “fix him up”. This judgement does not help the petitioner in any manner whatsoever. This Court finds that although the petitioner has made an allegation that the dismissal of the petitioner was already contemplated at the time of issuance of charge-memo itself and the departmental enquiry was only a formality, but neither any allegation has been made against the two enquiry officers who conducted the proceedings, nor there is anything on record to suggest bias against the petitioner. Rather, the enquiry officer refused to record any adverse finding against the petitioner on the major part of the allegation against him regarding obtaining appointment by using forged documents in absence of the material documents being not available on record. Thus, the allegation of the petitioner regarding the enquiry having been held with a pre-conceived mind, is also rejected.

B. Consideration of the arguments on the point of non- examination of the applicant i.e Rumana Devi, which triggered the enquiry resulting on initiation of disciplinary proceeding and non-production of her letter before the enquiry officer i.e document no -11 mentioned in the chargesheet.

24. It is important to note that Ramuna Devi is the mother of the petitioner.

25. So far as the non-production of document no. – 11, which was said to be an enclosure to the charge memo is concerned, it was alleged to be an application by Ramuni Devi, mother of the petitioner which triggered the enquiry, but the enquiry was primarily with regard to legality and validity of the appointment of the petitioner alleging forgery and fabrication of documents and absence of any provision for appointment on humanitarian ground. The allegation of illegal appointment was essentially to be based on the materials available with the department or the petitioner. The enquiry officer gave full benefit to the petitioner on account of non-availability of documents and brushed aside the allegation of forgery or fabrication of documents. Thus, non-production of aforesaid letter of Ramuna Devi and non-examination of Ramuna Devi in the enquiry proceedings tilted the case in favour of the petitioner. Consequently, the allegation of forgery or fabrication of documents was brushed aside by the enquiry officer. Thus, no prejudice has been caused to the petitioner by non-examination of Ramuna Devi or non-production of document no. – 11, the letter of Ramuna Devi.

C. Consideration of the arguments on the point of non-supply of the documents and its impact on disciplinary proceedings.

26. Upon perusal of the enquiry report, this Court finds that the limited finding which has been recorded by the enquiry officer with regard to the appointment of the petitioner being illegal on the ground that there is no provision for appointment on humanitarian ground, is based on the materials on record which were produced and available before the enquiry officer and so far as the other part of the allegation regarding using forged and fabricated documents is concerned, no finding adverse to the petitioner has been recorded in absence of the documents. Thus, the limited finding of the enquiry officer is neither illegal nor perverse. The enquiry officer has recorded a finding that the petitioner was not selected in the selection

process, which is also based on the materials produced by the petitioner himself and the appointment letter of the petitioner showed that the petitioner was appointed on humanitarian ground.

27. So far as the judgement passed by the Hon'ble Supreme Court reported in *(2010) 2 SCC 772(supra)* is concerned, there is no doubt that the departmental proceedings are required to be conducted by following the rules of natural justice and the documents sought to be relied upon by the authority to prove the charges are certainly required to be supplied to the delinquent and non-supply of the same will certainly amount to violation of rules of natural justice.

28. It is further not in dispute that the law is well-settled that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges. Further, there is no dispute that unless the statements are given to the delinquent, he will not be able to have an effective and useful cross-examination. In the present case, the petitioner has alleged violation of rules of natural justice on account of non-supply of documents demanded by him as mentioned in the charge-memo and non-supply of documents to defend his case and one of the main documents which he had demanded, was the letter of the applicant exhibit-11 which formed the part of the memo of charge. Admittedly, exhibit- 11 was not available before the enquiry officer and it has to be seen as to whether non-availability of exhibit- 11 and non-supply of documents to the petitioner has caused any prejudice to the petitioner and whether the same is fatal to the findings of the enquiry officer.

29. This Court finds that the enquiry officer has taken enough care not to record any adverse finding against the petitioner on account of non-availability or non-supply of documents to the petitioner as demanded by the petitioner and consequently, no finding with regard to use of fraudulent documents to obtain appointment was recorded by the enquiry officer. The enquiry officer only considered the legality or illegality of the appointment of the petitioner on the basis of documents filed by the petitioner himself and the materials available on record and the notings made in the appointment letter of the petitioner which is an admitted document and recorded that in

absence of any provision for appointment on humanitarian ground, the appointment of the petitioner was illegal.

30. This Court finds that though there has been violation of principles of natural justice by not providing the documents as demanded by the petitioner, but, at the same time, such documents were not even relied upon by the enquiry officer to record a finding against the petitioner. This appears to be a judicious approach from the side of the enquiry officer who brushed aside the allegation of forgery or fabrication on account of want of documents. Thus, the judgment passed by the Hon'ble Supreme Court reported in *(2010) 2 SCC 772 (supra)* does not help the petitioner in any manner whatsoever.

31. This Court finds that the enquiry officer made all efforts to obtain the documents demanded by the petitioner including the aforesaid exhibit 11 mentioned in the charge memo being the letter of the applicant Ramuna Devi but did not get any response. Ultimately, the successor enquiry officer enumerated 16 items vide letter dated 18.11.2013 (Annexure-8) and communicated the petitioner that since those documents were relating to the appointment of the petitioner, he must be in possession of the same and asked the petitioner to produce the documents on the date and time fixed for the enquiry. Consequently, the petitioner appeared before the enquiry officer and produce certain documents some of which found reference in the letter dated 18.11.2013 (Annexure-8) particularly the appointment letter of the petitioner at serial no 15 of the letter dated 18.11.2013 (Annexure-8). Since the petitioner had himself produced some documents, so there can be no dispute on such documents.

32. In absence of the required documents, the enquiry officer did not record any adverse finding against the petitioner with regards to allegation of use of fraudulent or forged documents for obtaining appointment rather it was recorded that finding on forgery of documents can be arrived only when the documents are received. The enquiry officer gave full benefit to the petitioner on account of non-availability of documents regarding use of fraudulent or forged documents for obtaining appointment. This Court is of the considered view that the petitioner has been put to an advantageous position on account of non-production of the required documents during enquiry proceedings and thus it has not caused any prejudice to the

petitioner. The following discussion will show that the findings of the enquiry officer is based on documents filed by the petitioner himself during the enquiry proceedings when he appeared with certain documents after issuance of the letter dated 18.11.2013 (Annexure-8).

33. The enquiry officer gave his findings on the basis of materials on record including those produced by the petitioner. This Court finds that the enquiry officer recorded his findings regarding illegal appointment of the petitioner on the basis of admitted documents which were also produced by the petitioner as mentioned in the enquiry report including his letter of appointment (Annexure-1) and the facts/documents referred in the letter of appointment itself showing that the petitioner was appointed on “humanitarian ground” on the basis of instructions issued by higher authority at Patna.

34. Further arguments of the petitioner is that the petitioner could not place his best defence in absence of essential documents. The best and the admitted case from the side of the petitioner is that he was appointed on “humanitarian ground” and in order to justify such appointment the learned counsel for the petitioner has referred to Rule 663 of Jharkhand Police Manual. The petitioner had also relied upon Rule 663 of Jharkhand Police Manual before the appellate authority but this plea was rejected. Rule 663 of Jharkhand Police Manual is quoted as under: -

“663. Selection of recruits. – (a) Strong, healthy young men between the ages of 19 and 27 years and who have passed secondary (i.e. Matriculation) examination shall be selected as recruits as far as possible. The standard of physical tests shall be same as given in Appendix 38, Clause 9 for Sub-Inspectors. For scheduled castes and tribes, the upper age – limit is up to 32 years and educational qualification can be reduced to middle pass if matriculates are not available. The standards of height and chest measurements are given below. These are the minima and Superintendents should endeavour to get men of higher standard: -

(i) for general – height 163 centimetres and chest 80 centimetres.

(ii) for scheduled caste and tribe – height 158 centimetres and chest 78 centimetres.

Note. – In measuring the chest, the measuring tape must be applied evenly but not tightly, its upper edge touching the lower border of the shoulder blades, and its lower edge passing just above the nipples, the arms hanging by the sides. The standard is the minimum measurement, with the chest fully deflated. Just before the

measurement is taken the candidate shall be made to count up to thirty, without taking breath and without hurrying.

(iii) There is no physical standard for Gurkhas, who are residents of India and men of the best physique obtainable and at least literate shall be enlisted.

N.B. – Nepalese subjects cannot be enlisted.

(b) Recruits shall be measured by the reserve inspector in the Superintendent's presence at the time of enlistment.

(c) The Selection Board is not precluded from 'selecting men over 27 years of age or, for special reasons, men beneath the standard of measurement, but it shall do so only on good grounds. Before enlistment the Deputy Inspector-General can give relaxation in height and chest by 2.5 cms. only.

(d) The recruitment shall be made twice a year in such a way that recruits are ready to go to Constables Training School before the start of the session. There shall be no necessity for training in district headquarters. The Superintendent shall publish notice of selection of candidates in newspapers giving the exact number of vacancies and also advertise through employment exchange. He shall endeavour that selection is completed and results are laid before the candidates the same day or on the following day so that they are not made to stay unnecessarily. No waiting list of candidates beyond the number advertised except for few extra men for possible unfitness in medical test is to be kept."

35. The learned counsel for the petitioner has relied upon power of relaxation under Rule 663 (c) of Jharkhand Police Manual.

36. Upon perusal of Rule 663 of Jharkhand Police Manual, this Court finds that the minimum required height and chest measurements for general candidate is height 163 centimeters and chest 80 centimetres and for scheduled caste and tribe – height 158 centimetres and chest 78 centimeters. The age requirement is between 19 and 27 years. The power of relaxation has been conferred upon the Selection Board under Rule 663(c) of Jharkhand Police Manual which enables the selection board to select men over 27 years of age or, for special reasons, men beneath the standard of measurement with a rider that such exercise of power shall be only on good grounds. It has a further rider that before enlistment such person with relaxation the Deputy Inspector-General can give relaxation in height and chest by 2.5 cms. only. Thus, the power of relaxation is only in terms of age, height and chest measurement, that too by the selection committee and only on good grounds.

37. This Court, from the admitted document on record i.e., the letter of appointment, finds that the petitioner was within the parameters prescribed for age, height and chest measurements and accordingly, this Court is of the considered view that there was no occasion for the selection board to exercise power of relaxation under Rule 663 (c) of Jharkhand Police Manual. This is over and above the findings recorded by the enquiry officer that there is no provision for appointment on “humanitarian ground” which has been accepted by the disciplinary authority and upheld by the appellate authority. Further there is neither any explanation from the side of the petitioner as to where was the occasion to exercise power of relaxation and offer appointment on “humanitarian ground” if the petitioner claims to have been selected on merits in the selection process nor there is any iota of any material or arguments from the side of the petitioner to justify such a course of appointment on humanitarian ground when a candidate is selected on merits. Selection on merits and selection on humanitarian grounds cannot exist simultaneously for the petitioner under any circumstances. The enquiry officer has given a finding that the petitioner did not succeed in the selection process and his selection on humanitarian ground is beyond provisions of law.

38. In view of the aforesaid circumstances the arguments of the petitioner is that the petitioner could not place his best defence in absence of essential documents is devoid of any merits. The petitioner, in order to justify his appointment of “humanitarian ground” has to simply show the provision of law and no document can justify his appointment of “humanitarian ground” in absence of any power to do so. In absence of power to appoint on “humanitarian ground”, no document in relation to appointment could have justify the appointment of the petitioner and accordingly, the arguments of the petitioner that he could not place his best defence in absence of essential documents is devoid of any merits and in fact no prejudice has been caused to the petitioner by non-supply of documents demanded by the petitioner.

D. Consideration of the arguments on the point of non- issuance of second show cause and its impact on disciplinary proceedings.

39. Although the learned counsel for the petitioner has specifically argued that the petitioner was not issued the second show cause notice to respond to

the enquiry report, but has neither argued nor demonstrated before this Court as to how the petitioner has been prejudiced by non-issuance of the second show cause notice. In fact, the limited finding of the enquiry officer is that the petitioner was not successful in the selection process and was appointed on humanitarian ground for which there is no provision in law and these findings are based on the documents produced by the petitioner himself and there is no dispute from the side of the petitioner that the petitioner was appointed on humanitarian ground as is apparent on the face of his appointment letter and he has not been able to show any provision of law enabling appointment on humanitarian ground. The power of relaxation of selection board under provision of Rule 663(c) as relied upon by the petitioner is neither attracted in the present case nor empowered any authority to provide appointment on humanitarian ground. In view of the aforesaid facts and circumstances, it would have made no difference, even if, the second show cause was issued to the petitioner and thus no prejudice has been caused to the petitioner on account of non-issuance of second show cause.

40. In the judgment passed by the Hon'ble supreme court reported in *(1993) 4 SCC 727 (Managing Director, ECIL versus B. Karunakar)* it has been held in para 31 as follows :-

“31 Hence, in all cases where the enquiry officer’s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.....”

41. In view of the aforesaid findings and considering the aforesaid judgement of the Hon'ble Supreme Court, no ground is made out for interference in the impugned order of punishment under Article 226 of the Constitution of India even if no second show cause was issued to the petitioner.

E. Consideration on the point of reference to exercise of power under Article 311(2)(b) of the Constitution of India by the authorities to impose punishment to the petitioner.

42. This Court finds that reference to Article 311(2) (b) of the Constitution of India has been wrongly made by the disciplinary authority and this aspect of the matter has not even been considered properly by the appellate authority. There is no question of dispensing with enquiry as the petitioner has been dismissed after conducting regular disciplinary proceedings and on the basis of enquiry. The order passed by the disciplinary authority reflects due application of mind in the records of enquiry proceedings. Thus, mere mentioning of Article 311(2) (b) of the Constitution of India in the order passed by the disciplinary authority is not fatal to the impugned orders or proceedings.

43. The judgement passed by the Hon'ble Supreme Court reported in *(1991) 1 SCC 362 (supra)* also does not apply to the facts and circumstances of this case in view of the fact that the authorities have not dispensed with the enquiry, rather a full-fledged enquiry was conducted against the petitioner and aforesaid limited finding was recorded on the basis of materials on record including those produced by the petitioner himself. The disciplinary authority passed a reasoned order based on enquiry report and materials on record. The appellate authority also rejected the arguments of the petitioner based on Rule 663 of Jharkhand Police Manual. Therefore, the provision of Article 311(2) (b) of the Constitution does not apply to the facts and circumstances of this case. It applies when there exists a situation which renders holding of enquiry not reasonably practical and the disciplinary authority must record in writing its reasons to support its satisfaction. In the present case, the enquiry was initiated, the petitioner participated in the enquiry, the enquiry report was submitted and thereafter, the order of punishment was passed.

Other points/judgements relied upon by the petitioner

44. Further in view of the judgement passed by the Hon'ble Supreme Court reported in *(1999) 2 SCC 10 (Supra)*, there is no dispute with regard to law laid down in aforesaid judgement regarding the limited scope of interference in the matter of departmental proceedings under Article 226 of the Constitution of India and the fact that the findings of the enquiry officer can be characterized as perverse, if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This Court finds that the limited findings which have been recorded by the enquiry officer holding him guilty of only one part of the allegation, as mentioned above, are based on materials on record and other part of the allegation was dropped on account of want of materials on record. The allegation of use of forged and fabricated documents for obtaining employment and that of illegal appointment on account of absence of provision for grant of appointment on humanitarian ground are two distinct grounds in connection with the appointment of the petitioner and the petitioner was held guilty only with regard to the subsequent ground.

45. So far as the argument of the petitioner by relying upon the judgement reported in *(2013) 4 SCC 301 (supra)* that the preliminary enquiry loses its importance at the time of regular enquiry and the argument of the petitioner that as per the enquiry report, only two documents were relevant for the purpose of the petitioner which were available on record which included the report of the enquiry officer, is concerned, this Court finds that the limited finding of the enquiry officer is not based on the report of the enquiry officer at all rather it is based on the materials produced by the petitioner himself before the enquiry officer including the appointment letter of the petitioner which itself reflected that the petitioner was appointed on humanitarian ground .

46. This Court finds that the petitioner was given full benefit of non-supply of documents by the enquiry officer himself and accordingly, the petitioner cannot say that the limited finding of the enquiry officer is

affected by violation of principles of natural justice on account of non-furnishing of documents.

47. From perusal of the enquiry report, it further appears that the enquiry officer, while recording the limited finding against the petitioner, has not even relied upon any of the oral witnesses, rather the finding is on the basis of admitted materials on record. In such circumstances, the judgement passed by the Hon'ble Supreme Court reported in *(2013) 2 SCC 606 (supra)* also does not apply to the facts and circumstances of this case.

48. This Court finds that the petitioner filed appeal and the appellate authority also considered the materials on record and dismissed the appeal.

49. In view of the aforesaid findings, this Court is of the considered view that the findings of the enquiry proceedings is neither perverse nor illegal; the violation of principles of natural justice on account of non-supply of documents etc. has gone to the advantage of the petitioner as the enquiry officer has brushed aside the allegation of forgery or fabrication of documents for the purposes of seeking employment and has given full advantage to the petitioner for failure on the part of the department to produce the documents which the enquiry officer also could not obtain in spite of best of efforts on their part; the findings of the enquiry officer that the appointment of petitioner was illegal in absence of any provision in law for appointment of humanitarian ground, is based on materials on record including those produced by the petitioner himself particularly the appointment letter which on the fact of it reflected that the appointment of the petitioner was on humanitarian ground.

50. As a cumulative effect of the aforesaid findings, no ground for interference is made out for interference in the impugned orders in exercise of powers under Article 226 of the constitution of India. Accordingly, this writ petition is dismissed.

51. Interim order, if any, stands vacated.

52. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)