

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 1473 of 2015**

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Nawal Kishore Prasad Sandilya S/O- Late Gokhul Sharma, resident of Village-  
Surdaspur, P.S.- Ghoshi; Distt- Jehanabad.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Engineer-in-Chief-cum-Additional commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Chief-Engineer, Road Construction Department, Govt. of Bihar, Patna.
4. The Executive-Engineer, Road Construction Department, Govt. of Bihar, Dist.- Jamui.
5. The Assistant-Engineer, Road Construction Department, Govt. of Bihar, Jamui.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr Abhimanyu Sharma,  
Ms Prakritita Sharma, Advocates

For the State : Mr Anil Kr Verma, AC to AAG IX

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**CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 01-05-2018**

Heard learned counsel for the petitioner and the respondent-State.

2 Charge Memo dated 18.11.2003, alleging that the petitioner had not handed over charge of some articles worth Rs 1,04,992/- while he was posted at Road Division I, Jamui, was served upon the petitioner after his retirement. The petitioner retired in 2000. The period during which he was posted in Road Division I, Jamui is from 08.09.1989 till 03.04.1994. Thus, the charges are, admittedly, in relation to a period up to 03.04.1994. The charge memo came to be



issued on 18.11.2003, nearly after nine years after he had been relieved from the Road Division I, Jamui. In the intervening period, the petitioner has retired in the year, 2000.

**3** In response to the charge memo, he has submitted his reply. The same is dated 15.07.2010 wherein he has specifically raised his objection regarding maintainability of the proceedings against him since the master-servant relationship has snapped.

**4** The petitioner has relied upon the provisions contained in proviso (ii) to Rule 43 (b) of the Bihar Pension Rules, 1950. By relying upon the same, he submits that the proceedings could not have been initiated by issuance of a charge memo on 18.11.2003 for an alleged occurrence which took place more than four years from the date of issuance of charge memo which, in the instant case, could at best up to November, 1999. Admittedly, the petitioner has been last posted in Road Division I, Jamui in 1994 and the allegations pertain to the period between 1989 to 1994, as noticed above. The objection regarding the proceedings being not maintainable in light of the provisions of the Bihar Pension Rules, as noticed above, has not been considered by the authorities though the said objection has been recorded in the order whereby recovery of an amount of Rs 65,620/- has been ordered from the petitioner.

**5** The order imposing the recovery from the petitioner



has also been challenged on the ground that though the responsibility of the loss has been found to be collectively attributable to the petitioner along with one SDO and Executive Engineer who were then also posted there, however, recovery has only been directed from the petitioner.

6 These issues have also been raised by the petitioner before the Review Authority being the same authority that is the Engineer-in-Chief, Road Construction Department, Government of Bihar. The said review has been disposed of under order dated 18.07.2014. The same also does not show any consideration of the petitioner's objection regarding the proceedings against him being not maintainable in light of the provisions contained in proviso (ii) to Rule 43 (b) of the Bihar Pension Rules. Specific pleadings have been made to this effect in the instant writ petition also. However, the counter affidavit filed on behalf of the respondent-State does not deal with the objection raised by the petitioner regarding maintainability of the proceeding in view of the bar contained in proviso (ii) to Rule 43 (b) of the Bihar Pension Rules.

7 Learned counsel for the State, however, submits that the proceedings were maintainable since the charge memo was required to be issued within four years from the date of retirement of the employee as per the provisions contained in Rule 43 of the Bihar



Pension Rules.

**8** Learned counsel for the petitioner has relied upon two judgments, one reported in the case of *State of Bihar & Others – Versus- Mohd Idris Ansari, 1995 (2) PLJR (SC) 51* and another reported in the case of *Urmila Sharma @ Urmila Singh & Another – Versus- State of Bihar & Others, 2010 (3) PLJR 845* in support of his contention that proceedings in respect of an occurrence which was more than four years prior to the issuance of charge memo could not have been resorted to in light of the provisions contained in Rule 43 (b) of the Bihar Pension Rules. The said two judgments support the stand of the petitioner in the instant writ petition.

**9** The proceedings initiated under Memo dated 18.11.2003 in respect of the allegations pertaining to the petitioners posting at Road Division I, Jamui in 1994 were much prior to four years from the date of issuance of the charge memo. Clearly, the bar under proviso (ii) to Rule 43 (b) of the Bihar Pension Rules applies in the case of charge memo dated 18.11.2003 which forms the basis of the order of punishment dated 25.02.2014.

**10** For the reasons indicated above, the entire proceedings initiated against the petitioner under charge memo dated 18.11.2003 being barred by the provisions contained in the Bihar Pension Rules are unsustainable in law. The punishment dated



25.02.2014 as a result of such initiation, as also the order dated 18.07.2014 passed on the review application are quashed. The petitioner, as a result of quashing of the impugned orders, shall be entitled to all consequential benefits.

**11** The writ petition is, accordingly, allowed.

**(Madhuresh Prasad, J)**

**M.E.H./-**

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