

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 4897 of 2013

Sukhan Ram Laguri

..... Petitioner

Versus

- 1.The Union of India, through the Secretary, Ministry of Railway (Railway Board), Rail Bhawan, New Delhi
2. The I.G.-cum-CSC/RPSF, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi
- 3.Director General RPF/RPSF, Railway Board, Ministry of Railway, Headquarter No.7th Battalion, Railway Protection Special Force, Moulaali, Hyderabad (Andhra Pradesh)
- 4.Senior Commandant, 7th Battalion, RPSF, Railway Board, Ministry of Railway, Railway Protection Special Force, Moulaali, Hyderabad (Andhra Pradesh)
5. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Saurabh Shekhar, Advocate
For the U.O.I. : Mrs. Nitu Sinha, C.G.C.

C.A.V. JUDGMENT Pronounced on 29.08.2025

This writ petition has been filed on behalf of the petitioner for issuance of appropriate writ, order or direction including the writ in the nature of certiorari, for quashing the order dated 17.12.2012 issued under the signature of the Respondent No.3 (i.e. Annexure-6), whereby the order of punishment has been passed withholding of 20% of the monthly pension otherwise admissible to the petitioner for a period of three years and the gratuity amount admissible to him may be released if not otherwise required.

For issuance of appropriate writ, order or direction, commanding upon the respondents authorities to forthwith release the entire arrears of difference of

pensionary benefits, which have been withheld pursuant to the order dated 17.12.2012, along with penal interest and

For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case.

2. The case of the petitioner is that the petitioner had joined his services under Railway Protection Force and after serving at some places he was ultimately granted promotion to the post of Assistant Commandant and while he was posted in Gaya Junction, memorandum of charge had been issued on 23.11.2010 for initiation of Departmental Proceeding against him by holding an enquiry in exercise of power conferred under Rule 9 of the Railway Services (Discipline and Appeal) Rules, 1968 for the allegation that the petitioner, while working as A.S.C., R.P.F., Gaya failed to prevent theft of coal from Railway rake and failed to exercise proper supervision on RPF personnel in that while he was present at Gaya Railway station as ASC/RPF/Gaya on 12.02.2010 at around 10.45 hrs. and aforesaid act of omission/commission on the part of the petitioner tantamount to violation of Rule 3 General 1(i), (ii), (iii) & 2.1 of the Rly. Services Conduct Rules, 1966.

3. Heard Mr. Saurabh Shekhar, Advocate and Mrs. Nitu Sinha, learned counsel on behalf of the Union of India.

4. It is submitted by learned counsel appearing for the petitioner that the impugned order dated 17.12.2012 is illegal, arbitrary and not sustainable in law.

It is submitted that after service of communication dated 23.11.2010, the petitioner appeared before the Enquiry Officer and gave defence against the charge and had also produced defence witnesses apart from the witnesses produced on behalf of the disciplinary authority.

It is submitted that the charge was framed against the petitioner and one Dr. Nazrul Islam (ED) (Security), Railway Board was said to be the sole eye-witness to the occurrence.

The petitioner denied the allegation and stated before the concerned authority that he is not involved in any of the irregularities and supervising failure on his part in his duty while discharging his duty on 12.02.2010, rather he stated that just after receipt of information on 12.02.2010 the petitioner had rushed to the spot and recovered the coal, valued at Rs.600/-, and on preliminary enquiry one Sub-Inspector, Sr. S.L. Upadhyay, and one constable, Sri Prashant Sri, were placed under Suspension, who failed to prevent the theft of coal and Sub-Inspector R.N. Singh of Gaya was directed to take follow up action and, thereafter, a case under Section 3A of R.P.U.P. Act was also registered under his direct command and supervision, as also a complaint against unknown G.R.P.F. Staff, who engaged the criminals for unloading coal at Gaya on material day from the railway rack, was sent to the Officer-in-Charge of G.R.P., Gaya, but the same was not entertained and as per his written direction, it was dispatched through registered post to the Superintendent

of Police, Railway, Patna for legal action against unknown G.R.P. Staff of Gaya.

The petitioner had further requested to the disciplinary authority to supply the base report of the allegation against him, as relied upon, but inspite of repeated requests the petitioner was deprived of getting the copy of the base report of senior DSC/MGS and the enquiry continued and completed without supply of the same to the petitioner.

It is submitted that in course of enquiry the defence witnesses had also been examined and D.W.-1, namely T.S. Ahmad supported the contentions of the petitioner, while D.W.2- R.N. Singh stated that after receiving information from the petitioner that some persons were unloading coal from a goods train at Platform No.2, he along with R.P.F. personnel went to the site and saw that three persons were fleeing with three gunny bags of coal after seeing R.P.F. personnel and only one person could be apprehended and three gunny bags with 150 kg. of coal were recovered and thereafter, he was brought to R.P.F. post and a case was registered. Likewise D.W.-3, namely Mr. S.L. Upadhyaya has also stated the same thing.

The specific charge is that inspite of receiving information with respect to theft of coal, the petitioner along with other persons had not bothered to go to the spot, however, it was proved that one person was apprehended with 150 kg. coal and to that effect a regular case was registered under R.P.U.P. Act. Thus, on the basis of the version of the defence witnesses, entire allegation levelled against the petitioner is frivolous and baseless.

It is submitted that the Presenting Officer had not considered the version of the defence witnesses and has given opinion wrongly that the petitioner had not gone on the site and as such the charge against him is fit to be proved.

Thereafter, the Enquiry Officer concluded the enquiry, but without giving any consideration to the version of the defence witnesses. The Enquiry Officer found the charges were proved against the petitioner and had not given any finding with respect to the defence version. It is further submitted that non-examination of the sole eye-witness, namely Dr. Nazrul Islam and non-supply of the document i.e. base report, which the petitioner had specifically demanded from the disciplinary authority, have seriously prejudiced the case of the petitioner.

It is submitted that during pendency of the departmental proceeding the petitioner had superannuated on 31.10.2011, but the proceeding continued against him till the year 2012.

5. Learned counsel for the petitioner, in support of his contention, has relied upon the following cases:

- (i) ***Union of India and Others Versus J. Ahmed*** reported in **(1979) 2 SCC 286**, at **Para No.s 7, 11, 13 and 17**
- (ii) ***Gitaben Vs. The State of Gujarat and Ors.*** passed in **Special Civil Application No. 18886 of 2024 (Neutral Citation: 2015:GUJHC:8031).**

Thus, in view of the above this writ petition may be allowed.

6. On the other hand, learned counsel for the Respondent-Union of India has submitted that the impugned order is fit and proper and no illegality has been committed by the authority while passing the impugned order and no interference is required from this Court.

It is submitted that the writ petition has been filed by the petitioner on completely distorted facts and as such the same is liable to be dismissed in limine by this Court.

It is submitted that while posted as ASC, RPF, Gaya with headquarters as Gaya Railway Station, the petitioner was responsible to prevent crimes against Railway property, including theft of coal from Railway racks in his jurisdiction. As precautionary measure necessary instruction to prevent theft of coal from railway rakes in his jurisdiction were frequently communicated to him through Sr. DSC/RPF/Mughalsarai vide No. DSC/M/ASC/Gaya/09 dated 01.09.2009 Mansua/M/Nirdesh/06 dated 19.09.2009 and dated 01.10.2009, control message No. 3087 dated 02.10.2009 and letter No. DSC/M/Complit/ASC/GYA/09 dated 11.11.2009 the petitioner as ASC/RPF had officers and personnel of RPF post/Gaya and C & TE Cop/Gaya under his command to counter any crime on Railway over his jurisdiction besides one Company of RPSF was also stationed at Gaya (under his command) assist RPF in countering any crime.

It is submitted that on 12.02.2010 at around 10.45 hours many people unloaded coal from a goods train standing at the platform at Gaya Railway Station, where RPF staff in uniform were also present and

ASC and post commander were stationed at Gaya Railway Station, it is unbelievable that such theft during daytime could be possible without the connivance of RPF officers and men.

Thereafter, the petitioner was directed to submit his explanation regarding the aforesaid incident and he submitted the explanation through his letter No. ASC/GAYA/Con-8/2010 dated 27.02.2010, in which among other things, he wrote as follows: "As police is involved in this case, how as ASC of RPF having no force to attend every point of his jurisdiction". This contention of the petitioner was incorrect, because RPF is competent to take action under RP(UP) Act even when police is involved despite the fact that all staff of RPF Post/Gaya and C & TE Coy/Gaya were under the command of ASC/RPF/Gaya Sri S.R. Laguri-the present petitioner and one company of RPSF was stationed at Gaya to assist ASC/RPF/Gaya in his duties.

It is submitted that the petitioner was issued with a major penalty charge sheet by IG/RPSF for the above lapse and accordingly a departmental enquiry was conducted and basing on the evidence adduced during the inquiry, the enquiry officer held the charges leveled against the petitioner as "proved".

It is submitted that, a copy of the enquiry report submitted by Shri A.K. Das, the then CO/10BN/RPSF-Cum-enquiry officer in the instant case was served upon the charged officer (i.e. the petitioner/7BN/RPSF/MLY, who had retired on 31.10.2011) the then ASC/RPF/Gaya advising him to

submit his representation. The petitioner submitted his representation on 21.11.2011.

It is submitted that though the primary responsibility of prevention of Railway Crime lies on the post commander and staff on duty at that particular area, all these were working under direct control of the charged official, i.e. the petitioner and he had every power to set things right and ensure that no undesirable incident happens. Moreover, the charged official, i.e. the petitioner was also present there at Gaya Railway Station when the incident took place and he could have acted positively and directed the staff on duty to prevent the menace of theft of coal. Further, the charged officer admitted that he used to conduct regular supervision and submit reports time and again to Sr.DSC/RPF/MGS about the position. It is further stated that prior to the instant case, five staff of Gaya post were suspended by the charged official in the similar instances and no action was taken against the recommended staff by Sr.DSC/RPF/MGS even though requested to do so. Therefore, keeping in view of the earlier happenings, the charged official was required to be more responsible and should have been more vigilant in order to prevent the theft of coal.

It was a fact that Dr. Nazrul Islam, the then ED/ Security/ Railway Board had witnessed the incident of theft. He was not placed in the list of witnesses and as such there was no mention of him in the charge sheet. Further the charged official, at no point of time during the course of enquiry, had indicated that he wanted the presence of Dr.

Nazrul Islam for examination. The Inquiry had indicated that he wanted the presence of Dr. Nazrul Islam for examination. The Inquiry officer also did not feel it necessary to examine the officer to substantiate the charges. Further, it was not also required to demand for Dr. Nazrul Islam to be examined, since, as per DIG/RS/RB's letter dated 24.02.2012 which was also made as one of the relied upon documents, Dr. Nazrul Islam himself had seen the whole incident of theft of coal from racks at Gaya station while travelling from New Delhi to Kolkata and opined that there would be some nexus between the RPF officials and criminals and further who demanded explanation from all the concerned officials and basing on which charge sheet was initiated. It is submitted that the DAR enquiry was completed on 03.08.2011 and the presenting officer submitted his brief on the enquiry on 20.09.2011. Thereafter, the petitioner had submitted his representation against the brief of Presenting Officer on 05.10.2011 and the Enquiry Officer, after going through all the documents and records of the enquiry including brief of Presenting Officer and representation of the writ petitioner, recorded his reasoned findings and submitted the enquiry report on 15.10.2011.

It is stated in Para No. 17 of the Counter Affidavit dated 09.08.2014 that since the petitioner had superannuated on 31.10.2011 and as such Hon'ble President of India as Disciplinary Authority after considering inquiry officer's report and the representation of the petitioner recommended for imposing penalty under

Rule 9(1) of the Railway Servants (Pension) Rules 1993, which provides the right of the President to withhold or withdraw pension and the case was forwarded to UPSC for advise vide No. 2012/Sec (E)/DAR-2/3 dated 16.08.2012.

It has been stated in Para 18 of the said counter affidavit that thereafter on receipt of advice of UPSC, Hon'ble President, after the careful consideration of the matter and in the light of the inquiry report and on the advice of UPSC as well imposed the punishment of withholding of 20% of the monthly pension for 3 years, otherwise admissible to the petitioner (CO) communicated vide order No. 2010/Sec (ABE)/DAR-2/8, dated 17.12.2012 and the same was acknowledged by the petitioner (retired AC, 7BN/RPSF/MLY) on 06.01.2013.

It is further submitted that the Presiding Officer and Enquiry Officer have taken into consideration all the statements made by the defence witnesses.

It is also submitted that every case has been examined by the Commission with the prime focus on upholding the principles of natural justice and an independent opinion without any bias. The advice of the commission is tendered on the basis of the conclusion arrived at after through judicious and independent consideration of all the relevant facts, charges framed and representation of the charged officer, i.e. the petitioner, inquiry report and other evidences on record and the documents made available by the Ministry in each individual case.

It is submitted that however, UPSC is an advisory body and their advice had been sought in the

instant case in accordance with the requirements in consultation with them as laid down in Article 320 (3) (c) of the Constitution of India R/W regulation 5 (1) of the UPSC (Exemption from consultation) Regulation 1958.

It is submitted that the act of omission/commission on the part of the petitioner was in violation of Railway Services (Conduct) Rules, 1966, and hence, the disciplinary actions were initiated against him and when the charges leveled against the petitioner were proved, suitable punishment was imposed upon him and hence, this writ petition may be dismissed.

7. Learned counsel for the Respondent, in support of their case, has placed reliance on ***State of Punjab and Ors. Vs. Ram Singh*** reported in **(1992) 4 SCC 54**.

8. Perused the Records of this case and considered the submission of both the sides.

9. It appears that the petitioner, while working as A.S.C., R.P.F., Gaya failed to prevent theft of coal from Railway rake and failed to exercise proper supervision on RPF personnel in that while he was present at Gaya Railway station as ASC/RPF/Gaya on 12.02.2010 at around 10.45 hrs. and had recovered Three gunny bags of coal worth around Rs. 600/-

10. Thereafter, the respondent authorities had issued chargesheet against the petitioner along with Memorandum of Charges against the petitioner on 23.11.2010 for initiation of Departmental Proceeding.

11. Two Charges were framed against the petitioner in the departmental proceeding, which were as follows:-

Charge No.1 :-Statement of Articles of charge framed against Sh. S.R. Laguri, AC. No.7 BN, RPSF, MLY the then ASC, Gaya, E.C.Railway.

Sh. S.R. Laguri, while working as ASC, RPF, Gaya failed to prevent theft of coal from Railway rake and failed to exercise proper supervision on RPF personnel in that while he was present at Gaya Railway Station as ASC/RPF/Gaya on 12.02.2010 at around 10.45 hrs., it was noticed that many people were unloading coal from goods train standing at a platform where RPF staff in uniform were present.

The above acts of omission/commission on the part of Sh. S.R. Laguri, AC, No.7 BN, RPSF, MLY the then ASC, Gaya E.C. Railway tantamount to violation of rule 3 General 1 (i), (ii), (iii) & 2.1 of the Rly. Services Conduct Rules, 1966. Hence the charge.

Charge No. 2:-Statement of Imputation of misconduct or misbehaviour on the basis of which the Articles of charges are framed against Sh. S.R.Laguri, AC, No.7 BN,RPSF, MLY the then ASC, Gaya, E.C.Railway, While Sh. S.R.Laguri was posted as ASC, RPF, Gaya with headquarters at Gaya Railway Station, it was part of his duties to prevent crimes against Railway property, including theft of coal from Railway rakes, in his jurisdiction. He had further been specifically directed through Sr. DSC/ RPF/ Mughalsarai letters no. DSC/ M/ ASC/ Gaya/

09 Dt. 1.9.2009. मंसुआ/ एम/ निर्देश/06 Dt. 19.9.2009 and dt. 1.10.09, control message No. 3087 dt. 2.10.2009, and letter No. DSC/M/ Complt/ ASC/GYA/09 Dt. 11.11.2009, to prevent theft of coal from Railway rakes in his jurisdiction. Sh. Laguri is a Gazetted Officer having office at Gaya Railway station, he had the officers and personnel of RPF Post/ Gaya and C&TE Coy/ Gaya under his command, and one Company of RPSF had been stationed at Gaya to assist him in his duties.

However, on 12.02.2010 at around 10.45 hrs. many people unloaded coal from a goods train standing at the Platform at Gaya Railway Station where RPF staff in uniform were also present. Such theft during day time could not be possible without the connivance of RPF officers and men, specially when ASC and Post Commander are stationed at Gaya.

At the time of the aforesaid incident, ASC/RPF/Gaya Sh. Laguri was present at RPF Post/ Gaya, which is situated at Platform No. 1 at Gaya Railway Station. When ASC/ RPF/ Gaya was present on platform no.1, it was his duty to attend an important train like Rajdhani Express personally. Yet ASC/RPF/ Gaya Sh. S.R. Laguri failed to prevent theft of coal in daylight and right on Gaya Railway Station.

12. Thereafter, the D.R. enquiry was held under Rule 9 of Railway Servant (Discipline & Appeal) Rules, 1968 and enquiry was conducted on several dates. Thereafter,

vide letter dated 15.10.2011 (i.e. Annexure-3) report was submitted by the Enquiry Officer.

13. Thereafter, vide Letter dated 28.09.2011 (i.e. Annexure-2) by the Enquiry Officer, the petitioner was served the photocopy of brief of the Presenting Officer.

14. After receiving reply from the petitioner and after holding the Departmental Proceeding the Enquiry Officer Shri A.K. Das, the then CO/10BN/RPSF Cum enquiry officer, vide Letter dated 15.10.2011 had submitted the enquiry report to the concerned competent authority by enclosing the statement of one of the witnesses, M.W.1.-Mr. Md.Saquib, Sr. DSC/RPF-Mugalsarai.

15. Thereafter, the petitioner was issued second show-cause Notice along with the copy of the Enquiry Report and pursuant to which the petitioner submitted his reply vide Letter dated 21.11.2011 (i.e. Annexure-4).

16. Although, in the meantime, the petitioner had retired on 31.10.2011, but the Enquiry continued under Rule 9(1) of Railway Servants (Pension) Rules 1993.

17. It is relevant to refer to Rule 9 of Railway Services (Pension) Rules, 1993 are quoted as follows:-

“9. Right of the President to withhold or withdraw pension.

1. The President reserves to himself the right of with holding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the

pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

2. The departmental proceedings referred to in sub-rule (1)

a. if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

b. if not institute while the railway servant was in service, whether before his retirement or during his re-employment

i. shall not be instituted save with the sanction of the President;

ii. shall not be in respect of any event which took place more than four years before such institution; and

iii. shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service."

18. Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968 provides for imposition of penalty, including minor and major penalties.

Rule 7 prescribes who will be the Disciplinary Authority, whereas Rule 8 prescribes authority to initiate Disciplinary Proceeding, whereas Rule 9 prescribes procedure for imposing major penalties and Rule 11 prescribes the procedure for imposing minor penalties.

19. Relevant part of Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 reads as follows:-

“ 10. Action on the inquiry report:-

(1)

(a).....

(b).....

(2) The disciplinary authority:-

(a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiry authority, it's findings on further examination of witnesses, if any, with findings of the inquiring authority an any article of charge to the Railway Servant, who shall be required to

submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

(b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

20. It further transpires that the period of continuation of the disciplinary proceeding after retirement of the delinquent employee and the order of the competent authority authorizing the conversion of the disciplinary proceeding into recovering from the pension for causing pecuniary loss has not been produced by the respondent or brought on record by the respondent authorities.

21. Rule 10 of the Railway Services (Pension) Rules, 1993 prescribes provisional pension where departmental or judicial proceeding may be pending, whereas Rule 15 of the said Rules provides the procedure for recovery and adjustment of government or railway dues from pensionary benefits.

22. Rule 15 of Railway Services (Pension) Rules, 1993 reads as follows:-

“Rule 15:- *Recovery and adjustment of Government or railway dues from pensionary benefits*

1. It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

2. The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

3. For the purposes of this rule, the expression "railway or Government dues" includes

a. dues pertaining to railway or Government accommodation including arrears of license fee, if any;

b. dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

4.

a. A claim against the railway servant may be on account of all or any of the following: -

a. losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

b. other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

c. non-Government dues.

b. Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in [Rule 8](#) being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub- para (i) which cannot be made in terms of Rule 8, and any

recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

c. Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

a. In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

b. In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-

The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be with held and the surety shall sign a bond in [Form 2](#).”

23. From perusal of Rule 15 of Pension Rules, it would appear that there is a provision for recovery of dues from the pensionary benefit of the delinquent employee.

24. Thereafter, vide Letter dated 18.10.2012, the Under Secretary to the UPSC communicated the opinion of the U.P.S.C., which reads as follows:-

“In view of the findings as discussed above and after taking into account all other aspects relevant to the case, the Commission are of the view that the charge proved against Shri S.R. Laguri (the CO) constitutes grave misconduct and ends of Justice would be met in this case if the penalty of “withholding of twenty percent of the monthly pension otherwise admissible to Shri S.R. Laguri (the CO) for a period of three years” is imposed on him. The gratuity amount admissible to him may be released if not otherwise required. They advise accordingly”

25. Thereafter, impugned punishment order dated 17.12.2012 (i.e. Annexure-6) was passed by imposing penalty of withholding of Twenty percent (20%) of the monthly pension otherwise admissible to Shri S.R. Laguri (the CO) for a period of three years. The Gratuity amount admissible to him may be released if not otherwise required.

26. It is evident that the petitioner was working on 12.02.2010 and was on duty. However, after reporting of the theft of coal, he along with R.P.F. officials and Police personnel had visited the place of occurrence and persons involved fled away, however, three gunny bags having 150 Kg. coal was recovered amounting to Rs. 600/-.

Thus, this cannot be a case of negligence, rather it is evident that the petitioner had taken prompt action.

27. This Court further finds that the statement of the defence witnesses of the petitioners, namely Mr. T.S. Ahmad, IPF/Rafiganj, Mr. R.N. Singh, Retd. Sub-Inspector,

Gaya Post of Mughalsarai Division and Mr. S.L. Upadhyaya, Sub-Inspector, Up Post of Mughalsarai Division examined as D.W.1, D.W.2 and D.W.3 respectively were rejected although they had specifically stated that the petitioner was present and had taken prompt action but the disciplinary authority has rejected the contention of the petitioner by taking it extraneous.

28. The judgment passed in the case of ***State of Punjab and Ors. Vs. Ram Singh*** reported in **(1992) 4 SCC 54** referred to by the learned counsel for the respondents is not applicable in the above case as the concerned Respondent-Police Officer was found heavily drunk on duty and when he was brought to the Doctor in the Civil Hospital for medical examination, he had also assaulted the doctor on duty. However, the concerned Civil Courts had set aside the order of dismissal of the respondent-Police Officer and had directed for his reinstatement in the services with all consequential benefits and which was affirmed by the Hon'ble Punjab High Court also. However, Hon'ble Supreme Court has set aside the order of reinstatement of the Respondent in service on the ground that the Respondent was heavily drunk and he was having his service revolver in his possession and was moving in the market with his service revolver, however, when he was sent to the doctor for medical examination then he had abused the medical officer on duty, which is a gravest misconduct warranting dismissal from service. In the above background, the Hon'ble Supreme Court had upheld the order of dismissal

of the Respondent after setting aside the order of Punjab High Court and Civil Courts in the State of Punjab.

However, the above judgment is different as the petitioner has even taken action against five persons and has suspended five persons with respect to such theft prior to the occurrence in question, which has been admitted even by the Respondents in their counter affidavit and one out of three persons involved in the said occurrence was caught and 150 kg. of coal was recovered on the date of occurrence, i.e on 12.02.2010. Thus, this case is not applicable on the facts and in the circumstances of this case.

29. It has been held in ***Gitaben Vs. The State of Gujarat and Ors.*** passed in **Special Civil Application No. 18886 of 2024 (Neutral Citation: 2015:GUJHC:8031)** at **Para 25** and **31** as follows:-

“Para 25:- It is surprising to note that respondent no.1 has stated in the impugned order that he does not agree with the contentions advanced on behalf of the petitioner, regarding the judgment of this Court in Special Civil Application No. 2073/2000, dated 05.05.2000. The said judgment has been conveniently brushed aside by respondent No.1 as it may not have matched with the conclusion he wanted to arrive at. The said judgment squarely covers the issues involved in the present petition and the relevant portion thereof is reproduced hereinbelow:

“7. *** So far as charges Nos. 3 to 9 are concerned, which related to the failure on the part of the petitioner to remove unauthorized encroachment, it may straightaway be observed that such allegations

may at the most speak of inefficiency, but certainly they do not constitute any misconduct on the part of the petitioner. There are large number of unauthorized encroachments even on the lands which belong to the Government and if the Government functionaries are not able to remove the encroachment for various reasons, including the law and other problems or for other alike reasons, it cannot be said that such functionaries have misconducted themselves. In any case, a difference has to be made between inefficiency and misconduct. I find that it is a case in which there was no material which can be said to be relevant and germane to the grounds of misconduct as mentioned in S. 57(1) of the Act and the petitioner, who was an elected representative of the Panchayat functioning as a Sarpanch, has been removed for reasons which are not at all germane to the grounds mentioned in S. 57(1) and there was no material to form an opinion against the petitioner with regard to any of the charges for which he was subjected to the show cause notice and for which the impugned orders have been passed. **It appears that the authorities charged with the power under S.57 for the purpose of removing and for considering the appeal against the order of removal have not addressed themselves to the requirements and have misconstrued the case of the petitioner to be a case of misconduct whereas in fact at the most it could be said to be a case of inefficiency on the part of the petitioner if the unauthorized encroachments have not been removed. The task of removing unauthorized encroachment is a general problem which is faced by various local**

bodies, including Municipal Corporations and the Government itself even when it is armed with court orders and for reasons beyond the control of the concerned functionaries, may times it becomes impossible to remove such unauthorized encroachment without use of force and therefore, in the opinion of this court such failure, which at the most reflect the level of efficiency, cannot be treated as misconduct or a persistent default in performance for the purpose of removing an elected office bearer. If on such grounds elected representatives are removed from their offices, as if they are Government servants, it would militate against the basic principles of democratic set up and the democratic institutions at the local self Government and it would amount to a direct interference with the functioning of the local bodies contrary to the provisions made by the Legislature. This Court while considering such matters is not sitting in Appeal over the orders passed by the authorities, but what is found in the facts of this case is that the orders have been passed against the petitioner for reasons which are wholly extraneous and not at all germane to the grounds which are mentioned in S. 57(1) for the purpose of removal of an elected office bearer like Sarpanch and it is a case of total absence of any material on the basis of which the opinion could be formed against the petitioner for the purpose of holding the charges to be proved-rather the charges have not nexus to the grounds mentioned in Sec. 57(1).

Para 31:- As stated by the Supreme Court in *Sharda Kailash Mittal v. State of M.P.*, reported in MANU/SC/0022/2010 : AIR 2010 SC 3450, the power or

removal can be involved only for strong and weighty reasons. A democratically elected Sarpanch ought not to be removed by exercise of powers by the respondent authorities for flimsy reasons, as the power conferred upon the respondents under Section -57(1) of the Act is drastic in nature. The very nature of the power casts an obligation upon the respondent authorities to exercise it cautiously and with circumspection, and not at the drop of a hat.”

30. In the above case, it is evident that the appellant was wrongly dismissed by the authorities concerned, which was set aside by the Hon’ble Gujarat High Court on the ground that the appellant had taken action against the encroachers. The High Court also held that the task of removing unauthorized encroachment is a general problem which is faced by various local bodies, including Municipal Corporations and the Government itself even when it is armed with court orders and for reasons beyond the control of the concerned functionaries, sometimes it becomes impossible to remove such unauthorized encroachment without use of force and therefore, in the opinion of this Court, such a failure, which at the most reflect the level of efficiency, cannot be treated as misconduct or a persistent default in performance for the purpose of removing an elected office bearer.

31. It appears that the petitioner has even informed the Senior ASC for taking action against some officials (Para 5 -6 of the Enquiry Report), but no action was taken by the Senior ASC while the petitioner was only an ASC and thus, the petitioner was virtually left alone and subjected to fault.

32. It is further evident that the enquiry commenced on 23.11.2010 by serving the petitioner the memorandum of charges, however the Enquiry Officer submitted his report on 15.10.2011 deliberately. The Second show-cause Notice was issued to the petitioner along with copy of enquiry report on 23.11.2010 and also on 31.10.2011 and 09.11.2011.

However, in the meantime the petitioner had retired on 31.10.2011.

33. Thus, there was no relationship of Employee and Employer between the Petitioner and the Union of India, i.e. the Railway Department even before the impugned order was passed.

34. It is well settled that once the employee has retired then there is no relationship of employer and employee, however, in the present case the enquiry continued against the delinquent till 17.12.2012 despite his retirement on 31.10.2011.

35. It has been held in the case of **State Bank of India & Ors. Versus Navin Kumar Sinha** reported in **(2024) SCC OnLine SC 3369** at Para **31** and **32** as follows:-

*“**Para 31:-** As has been held by this Court on more than one occasion, a subsisting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (I this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on*

attaining the age of superannuation or after the extended period of service.

Para 32:- *Even in the case of C.B. Dhall (supra) relied upon by the appellants, this Court while considering the purport of Rule 20B of the State Bank of India (Supervising Staff) Service Rules, 1975 held that under Rule 20B disciplinary proceeding, if initiated against an employee before he retires from service, could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceeding, the employee is deemed to have continued in service but for no other purpose.”*

36. It has been held in the case of **Jagdish Prasad Singh versus State of Bihar and Others** reported in **(2024) SCC OnLine SC 1909**, at **Para-20,23,24,25** and **26** as follows:-

“Para-20:- *Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation. The order directing reduction in pay scale and recovery from the appellant was manifestly not preceded by any show cause notice and was thus, passed in gross violation of the principles of natural justice. Pursuant to the order dated 20th July, 2009 passed in the Writ Petition No. 6714 of 2009 filed by the appellant, he submitted a representation to the Secretary, Food and Consumer Protection Department, Government of Bihar, which vide order dated 8th October, 2009 was rejected,*

preceded by a personal hearing. A perusal of the said order would indicate that the Secretary took a view that as per paragraph 11 (supra) of the Government Resolution, the first/second time bound promotion of the appellant had come to an end automatically w.e.f. on 1st January, 1996 and thus, the appellant was required to be redesignated to the post of Marketing Officer and would be entitled to the revised pay of Rs. 5500-9000 w.e.f. 1st January, 1996 as recommended by the Fitment Committee. Thus, even in this order, the promotion conferred to the appellant to the post of ADSO on 10th March, 1991 is not doubted.

Para-23:- *In the case of State of Punjab v. Rafiq Masih (White Washer)³, this Court held as under : -*

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

(v.) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

(emphasis supplied)

Para-24:- *Recently, this Court in Thomas Daniel v. State of Kerala⁴, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.*

Para-25:- *The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.*

Para-26:- *The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he*

had been promoted as an ADSO, while drawing the pay scale of Rs. 6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.

37. So far as charge of not preventing theft of coal and misconduct on the part of the petitioner is concerned, it is evident that the petitioner had tried his best to prevent theft of coal time and again and earlier, prior to the said incident, five staffs, who failed to prevent the theft of coal, were put under suspension by the petitioner and higher authorities were requested by the petitioner to take necessary action against some staff of Gaya R.P.F. Post, who were involved in such theft, but no action was taken against the said staffs. It further appears that in connection with the incident in question, two staffs namely S.L. Upadhyay, Sub Inspector and one Constable Prasant Sur, who failed to prevent the theft, were placed under suspension after preliminary enquiry and R.N. Singh, Sub-Inspector was asked to take follow up action, however, these facts were not considered by the Disciplinary Authority as well as the Appellate Authority. Therefore, it would be improper to believe that lack of efficiency or attainment of highest standards in discharging duty attached to public office would *ipso facto* constitute misconduct.

It has been held by Hon'ble the Supreme Court that there may be some negligence in performance of duty and lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty, but it would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability is very high.

In the instance case, it has been even noticed from the impugned order dated 17.12.2012 (i.e. Annexure-6) that the authorities noted that there appears to be some weight in the contention of the writ petitioner that he had been making efforts to improve the function of his unit and listed out some of the actions taken by him including suspension of five personnel of Gaya Post in a previous incident.

38. Therefore, it is evident that considering the amount of coal and its price involved in the theft (i.e. 150 kg of coal in three gunny bags worth Rs.600/- were recovered), deduction of 20% of the pension of the petitioner for a period of three years is excessive and arbitrary and not sustained in law.

39. Moreover, it is not the case of the Respondents that the petitioner had deliberately committed misconduct, rather it is the case of the Respondents that the act of the petitioner amounts to misconduct as it failed to take proper action against the theft of coal, which is rampant in the Gaya Railway Station.

40. So far as charge of not preventing theft of coal and misconduct on the part of the petitioner is concerned, it is evident that the petitioner had tried his best to prevent theft of coal time and again. Even earlier, prior to the said incident, five staffs, who failed to prevent the theft of coal, were put under suspension by the petitioner and higher authorities were requested by the petitioner to take necessary action against some staffs of Gaya R.P.F. Post, who were involved in such theft, but no action was taken against those staffs. It further appears that in connection with the said incident in question, two staffs namely S.L. Upadhyay, Sub Inspector and one Constable Prasant Sur, who failed to prevent the theft, were placed under suspension after preliminary enquiry and R.N. Singh, Sub-Inspector was asked to take follow up action, however, these facts were not considered by the Disciplinary Authority as well as the Appellate Authority.

Therefore, it is difficult to believe that lack of efficiency or attainment of highest standards in discharging duty attached to public office would *ipso facto* constitute misconduct.

41. It has been held by Hon'ble the Supreme Court that there may be some negligence in performance of duty and lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty, but it would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be

irreparable or the resultant damage would be so heavy that the degree of culpability is very high.

42. It has been held in the case of ***Union of India and Others Versus J. Ahmed*** reported in **(1979) 2 SCC 286**, at **Para No.s 7, 11, 13** and **17** as follows:-

“Para 7:- To appreciate the contention it is better to have a look at the charges framed against the respondent. They are as under:

“(i) Completely failed to take any effective preventive measures against widespread disturbances breaking out in Nowgong District in spite of adequate warning being conveyed;

(ii) Showed complete lack of leadership when the disturbances actually did break out and failed to give proper direction to your subordinate Magistrates and coordinate cooperations with the police to restore law and order;

(iii) Did not personally visit the scenes of disturbances within the town or in the rural areas, in time to take personal control of the situation and to exercise necessary supervision;

(iv) Did not keep Government informed of the actual picture and extent of the disturbances;

(v) Showed complete ineptitude, lack of foresight, lack of firmness and capacity to take quick and firm decision and were, thus largely responsible for complete breakdown of Law and Order in Nowgong town as well as the rural areas of Nowgong District.

Thus you proved yourself completely unfit to hold any responsible position.”

Para 11:- Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* [17 QB 536, 542]). A disregard of an essential condition of

the contract of service may constitute misconduct [see *Laws v. London Chronicle* (Indicator Newspapers [(1959) 1 WLR 698])]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* [61 Bom LR 1596], and *Satubha K. Vaghela v. Moosa Raza* [10 Guj LR 23]. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India* [(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani v. Air France, Calcutta* [AIR 1963 SC 1756 : (1964) 2 SCR 104 : (1963) 1 LLJ 679 : 24 FJR 464] wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that

lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd. [(1978) 19 Guj LR 108, 120]). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

Para 13:- *Having cleared the ground of what would constitute misconduct for the purpose of disciplinary proceeding, a look at the charges framed against the respondent would affirmatively show that the charge inter alia alleged failure to take any effective preventive measures meaning thereby error in judgment in evaluating developing situation. Similarly, failure to visit the scenes of disturbance is*

another failure to perform the duty in a certain manner. Charges 2 and 5 clearly indicate the shortcomings in the personal capacity or degree of efficiency of the respondent. It is alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete ineptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. They may be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceedings. In fact, Charges 2, 3 and 6 are clear surmises on account of the failure of the respondent to take effective preventive measures to arrest or to nip in the bud the ensuing disturbances. We do not take any notice of Charge 4 because even the Enquiry Officer has noted that there are number of extenuating circumstances which may exonerate the respondent in respect of that charge. What was styled as Charge 6 is the conclusion viz. because of what transpired in the inquiry, the Enquiry Officer was of the view that the respondent was unfit to hold any responsible position. Somehow or other, the Enquiry Officer completely failed to take note of what was alleged in Charges 2, 5 and 6 which was neither misconduct nor even negligence but conclusions about the absence or lack of personal qualities in the respondent. It would thus transpire that the allegations made against the respondent may indicate that he is not fit to hold the post of Deputy Commissioner and that if it was possible he may be reverted or he may be compulsorily retired, not by way of punishment. But when the respondent is sought to be removed as a disciplinary measure and by way of penalty, there should have been clear case of misconduct viz. such acts and omissions which would render him liable for any of the punishments set out in Rule 3 of the Discipline and

Appeal Rules, 1955. No such case has been made out.

Para 17:- *It thus appears crystal clear that there was no case stricto sensu for a disciplinary proceeding against the respondent. In fact the inquiry was held to establish that the respondent was not fit to hold a responsible post. The respondent was actually retiring from service and there was no question of his any more holding a responsible position. Yet not only the inquiry was initiated but he was retained in service beyond the date of his normal retirement till the final order was made on October 11, 1963 when he was removed from the Indian Administrative Service. It appears that there were large scale disturbances in the State. There followed the usual search for a scapegoat and the respondent came handy. Some charges were framed none of which could constitute misconduct in law. Some charges were mere surmises. Substance of the allegations was that he was not a very efficient officer and lacked the quality of leadership and was deficient in the faculty of decision making. These deficiencies in capacity would not constitute misconduct. If the respondent were a young man and was to continue in the post for a long period, such an inquiry may be made whether he should be retained in the responsible post. He may or may not be retained but to retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified. The High Court was, therefore, right in coming to the conclusion that the respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void.”*

43. It is evident that no departmental proceeding could have continued under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 after his superannuation and without extending the period of enquiry as well as the tenure of service of the petitioner.

44. From perusal of Para-3 of the impugned order dated 17.12.2012 (i.e. Anneuxre-6) it reveals that even after superannuation of the petitioner on 31.10.2011 the Disciplinary Proceeding initiated under Rule 9 of Railway Servants (Disciplinary & Appeal) Rules, 1968 was deemed to have been continued under Rule 9 of Railway Services (Pension) Rules, 1993 and which is completely illegal, arbitrary and not sustainable in law. No Disciplinary proceeding initiated under Rule 9 of Railway Servants (D&A) Rules, 1968, can be deemed to be continued under the provisions of Rule 9 of Railway Services (Pension) Rules, 1993 without drawing formal order by the competent authority.

The Department cannot on its own whims and desires convert the regular departmental proceeding initiated under Rule 9 of Railway Services (Discipline and Appeal) Rules, 1963 to the proceeding under Provisions of Rule 9 of Railway Servants (D&A) Rules, 1968. Thus, the impugned order dated 17.12.2012 passed by Respondent No.3 is fit to be set aside on this ground alone.

45. In the instant case, it is evident from the impugned order dated 17.12.2012 (i.e. Annexure-6) that the authorities had also noted that there appears to be some weight in the contention of the writ petitioner that he had been making efforts to improve the function of his unit and listed out some of the actions taken by him including suspension of five personnel of Gaya Post in a previous incident.

46. Therefore, it is evident that considering the amount of coal and its price involved in the theft (i.e. 150 kg of coal in three gunny bags worth Rs.600/- were recovered), deduction of 20% of the pension of the petitioner for a period of three years is excessive and arbitrary and not sustained in law.

47. Moreover, it is not the case of the Respondents that the petitioner had deliberately committed misconduct, rather it is the case of the Respondents that the act of the petitioner amounts to misconduct as it failed to take proper action against the theft of coal, which was rampant in the Gaya Railway Station at the relevant time.

48. It is further evident that apart from the petitioner, no other person found on the Gaya Railway Station on duty was chargesheeted and no action had been taken against any other person relating to the occurrence, which also amounts to violation of Article 14 and Article 16 of the Constitution of India.

49. Even no action was taken against the R.P.F. Personnels and Police personnels who were on duty at the place of occurrence and where the theft of coal was reported and prior to the incident, the petitioner had suspended five staffs in connection with similar incident.

50. It is evident that in the entire proceeding the petitioner has been singled out by the Railway Department and no other person has been chargesheeted by the respondent authorities.

51. In view of the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Others Versus J. Ahmed*** reported in **(1979) 2 SCC 286**, the order of punishment is set aside as the Hon'ble Supreme Court has held that after retirement, the punishment could not have been imposed after expiry of Six months.

52. In view of the discussions made above and in the light of the judgments of the Hon'ble Supreme Court and on the facts and in the circumstances of the case, order of punishment dated 17.12.2012 issued under the signature of the Respondent No.3, as contained in Annexure-6 to this writ application, is set aside.

53. Thus, this writ petition is hereby allowed.

(Sanjay Prasad, J.)

Jharkhand High Court, Ranchi
Pronounced on 29.08.2025
N.A.F.R./s.m.