



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR



S.B. Civil Writ Petition No. 13646/2020

Vilayati Ram Son Of Late. Charan Das, Aged About 68 Years,
 Address House No. 17, Kali Kothi, Niwaru Road, Jhotwara, Jaipur
 (Rajasthan) - 302012.

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary To Government, Department Of Personnel, Rajasthan, Secretariat, Jaipur - 302005.
2. Secretary, Department Of Law And Legal Affairs, Secretariat, Jaipur - 302005.
3. Director Pension And Pensioners Welfare Department, Rajasthan, Jyoti Nagar, Jaipur - 302005.
4. Deputy Secretary To The Government, Department Of Personnel (A-3/enquiry), Rajasthan, Secretariat, Jaipur - 302005.
5. Rajasthan Public Service Commission (Rpsc), Through Its Secretary, Ghooghara Ghati, Jaipur Road, Ajmer (Rajasthan)-305001.

----Respondents

For Petitioner(s) : Mr. Tribhuvan Narayan Singh

For Respondent(s) : Mr. Archit Bohra, AGC with
 Ms. Sweekriti Sharma
 Mr. Rahul Lodha, AGC
 Mr. Dilip Singh

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

06/01/2026

1. Heard application No.01/2025 and with consent of the counsel for the parties, the application is allowed and matter is considered for final disposal at this stage.
2. CMS No.12901/2020 is disposed as withdrawn.





3. Instant writ petition is filed with following prayer:

- (i) by an appropriate writ, order or direction the punishment order dated: 19-08-2020 (Annexure:16) may kindly be quash and set-aside.
- (ii) by an appropriate writ, order Respondents be directed to pay the Pension to the petitioner as he was getting before passing of the order dated: 19-08-2020 and other retirement benefits which the petitioner is entitled to in accordance with law.
- (iii) by an appropriate writ, order Respondents be directed not to take any further coercive action against the Petitioner considering the fact that the Petitioner is a Senior Citizen.
- (iv) by an appropriate writ, order Respondents be directed to pass necessary and consequential orders in this regard within a period of two months considering the fact that the Petitioner is a Senior Citizen.

4. Learned counsel for petitioner while placing reliance upon judgment in case of **Brij Mohan Vs. State of Rajasthan DB Special Writ Appeal No.659/2015** passed by this Court and **H.L. Gulati Vs. Union of India Civil Appeal No.8224-8225/2011** passed by Hon'ble Supreme Court has submitted that the petitioner was appointed on post of Vidhi Rachnakar in the Department of Law and Legal Affairs on 16.06.1994 and was confirmed in service on 07.01.1997. He further submitted that a departmental enquiry was proposed against the petitioner and on 25.02.2008 the petitioner was placed under suspension and afterwards a memo of charge was issued under Rule 16 of Rajasthan Civil Services (Classification Control and Appeal) Rules, 1958





(hereinafter referred as "Rules of 1958"). He further submitted that after due enquiry, the petitioner was not found guilty by the Inquiry Officer but the disciplinary authority disagreed with the report and issued a notice to the petitioner and on the basis of statement of Mahendra Singh (Tehsildar), recorded under Section 161 Cr.P.C. by IO, has held that the charge No.1 is proved and petitioner was found guilty of procuring false caste certificate to secure job. He further submitted that on the basis of charge No.1, charge No.2 was found proved wherein a land transaction was mentioned by disciplinary authority. He further submitted that the petitioner was charged with submission of a false caste certificate claiming to be a person of Scheduled Caste and on the basis of complaint filed by politician Nasru Khan, FIR was registered wherein the petitioner has faced the charge-sheet in criminal court and was acquitted.

5. He further submitted that it is obligatory on part of the disciplinary authority to record a finding whether delinquent employee has committed an act of "grave misconduct" or "grave negligence". He also submitted that without any specific findings, 100% pension has been withheld by the respondents, which is contrary to the settled norm.
6. Aforesaid contentions were opposed by learned Counsel appearing on behalf of the respondents. He submitted that the petitioner had procured appointment on the basis of a false caste certificate and, after knowledge of the falsity of the caste certificate, a charge memo was issued and D.E was instituted and the petitioner was found guilty by the





Disciplinary authority and after consultation with RPSC forfeited 100% pension, as petitioner was superannuated.

7. Learned Counsel appearing on behalf of the RPSC submitted that the RPSC was duly consulted and on the basis of material on record, concurrence was accorded to the proposal.
8. Learned Counsel appearing on behalf of the Pension Department submitted that they have acted strictly on the advice of the concerned department.
9. Learned Counsel appearing on behalf of respondent Nos. 1, 2 and 4, while placing reliance upon the judgments in the case of **Airport Authority of India v. Pradeep Kumar, 2025 INSC 149, and State of Karnataka and another v. Umesh, (2022) 6 SCC 563**, submitted that in the departmental proceedings, strict rules of evidence are not applicable and the principle of preponderance of probabilities are applicable. He further submitted that the material available on record was sufficient to draw a conclusion that the petitioner had submitted a false caste certificate. He also submitted that when disciplinary authority is satisfied about the falsity of the certificate then it may record finding overturning the findings recorded by the Inquiry Officer. He further submitted that earlier an order of disagreement was passed and reasons were recorded and due opportunity of hearing was granted to the petitioner and thereafter the final order was passed by the disciplinary authority, which is in conformity with law.





10. He further placed reliance upon the judgment in the case of

Kiran Thakur v. Union of India, 2023 SCC OnLine Del

2912 and submitted that at the time when the disciplinary authority passed the order, the criminal case was pending. He further submitted that the outcome of the criminal case is not a ground for allowing the writ petition, as the principles governing criminal proceedings and departmental proceedings are different, and in such cases a lenient approach cannot be adopted.

11. Heard learned counsel for the parties and perused the entire record along with judgments as referred by learned counsel for both the parties.

12. Brief facts of the case are that the petitioner was appointed on the post of Vidhi Rachnakar after being selected through RPSC on 16.06.1994 and the petitioner joined service on 26.06.1994 in the Department of Law and Legal Affairs, Government of Rajasthan. Thereafter, he was confirmed in service on 07.01.1997. However, on the basis of a complaint, a departmental inquiry was proposed and the petitioner was placed under suspension vide order dated 25.08.2008.

13. After issuance of a memorandum of charge-sheet under Rule 16 of the Rajasthan Civil Services (CCA) Rules, 1958, an inquiry was conducted by the Commissioner, Departmental Inquiry, Rajasthan. An FIR No. 345/2012 was also registered on 31.10.2012 at Police Station Ashok Nagar, Jaipur (South) under Sections 419, 420 and 471 IPC and thereafter a charge-sheet was filed against the petitioner.





14. After completion of the departmental inquiry, the Inquiry Officer (Commissioner, Departmental Inquiry), prepared a report in favour of the petitioner as he was not found guilty in both the charges. However, the disciplinary authority disagreed with the findings and conclusions drawn by the Inquiry Officer as recorded in the inquiry report dated 27.04.2015. Thereafter, a disagreement notice dated 09.08.2018 was issued and an explanation was called for from the present petitioner, which was duly submitted by him.

15. In the meantime, Metropolitan Magistrate No. 23, Jaipur Metropolitan, acquitted the petitioner from the charges framed in criminal case, arising out of FIR No. 345/2012 registered at Police Station Ashok Nagar, Jaipur (South) on 31.10.2012. In the meantime, the present petitioner attained the age of superannuation and he was superannuated on 30.11.2015.

16. The disciplinary authority, on the basis of the statement of Mahendra Singh, Tehsildar, recorded under Section 161 Cr.P.C. passed an order dated 19.08.2020, whereby disagreeing with the report of the Inquiry Officer, found the petitioner guilty in both the charges as mentioned in the memorandum of charge-sheet and, by invoking Rule 7 of the Rajasthan Pension Rules, 1996, ordered stoppage of 100% pension for the entire life, resulting in forfeiture of pension.

17. The material on record indicates that the petitioner was charged for allegedly procuring a false caste certificate and by using the same, securing employment as Vidhi Rachnakar





in the respondent department. The material on record clearly indicates that the Commissioner, Departmental Inquiry, found that the charges were not proved against the petitioner. Admittedly, Mahendra Singh, the Tehsildar who allegedly issued the SC certificate, was not produced as prosecution or departmental witness. The record also indicates that the Sarpanch and Patwari, who prepared the report for issuance of the SC certificate, were also not produced as witnesses. The complaint was made by one Nasru Khan, who was also not examined.

18. The impugned order dated 19.08.2020 has been passed solely on the statement of Mahendra Singh, Tehsildar-cum-Executive Magistrate, Kishangar Bas, Alwar, recorded under Section 161 Cr.P.C. on 07.01.2013 by the investigating officer. On the basis of this statement alone, the disciplinary authority has drawn its conclusion.
19. The order dated 19.08.2020 issued by the disciplinary authority is reproduced as under:-

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20. Aforesaid order clearly indicated that the finding is based upon statement of Mahendra Singh recorded under Section 161 Cr.P.C. during investigation of criminal case. The material on record indicated that Mahendra Singh was neither examined in departmental enquiry nor by a criminal court. The order dated 19.08.2020 has not referred examination of Mahendra by any of the authority. The material on record further indicates that no reliance has been placed upon any evidence recorded by the Commissioner, Departmental Inquiry.

21. The disciplinary authority has disagreed with the findings recorded by the Inquiry Officer and on the basis of the disagreement note issued a notice dated 09.02.2018 to the present petitioner. In the disagreement note dated 09.02.2018, nowhere it has been mentioned that the disciplinary authority proposed to rely upon the statement of Mahendra Singh recorded under Section 161 Cr.P.C.

22. The primary object of recording a statement under Section 161 Cr.P.C. is to assist the police during investigation for purposes of court proceedings such as framing of charge or contradicting a witness during trial under Section 162 Cr.P.C. A statement recorded under Section 161 Cr.P.C. holds no independent evidentiary value under Section 162 Cr.P.C. and can be used only for the purpose of contradiction or omission, but not as substantive piece of evidence, unless the witness is examined.

23. In case of **State Bank of Bikaner, Jaipur vs. Srinath Gupta, AIR 1997 SC 243**, Hon'ble Supreme Court has





considered the evidentiary value of statement recorded under Section 161 Cr.P.C. in domestic inquiries and held that such statements can be taken on record in disciplinary proceedings only if the witness is made available for cross-examination by the delinquent employee. Failure to produce the witness for cross-examination vitiates the inquiry. Reiterating the principles of natural justice and the right to fair hearing, Hon'ble Supreme Court emphasized that documents must be proved by examining the witness and cannot be relied upon in isolation.

24. In the case of **Airport Authority of India v. Pradip Kumar Banerjee 2025 INSC 149**, Hon'ble Supreme Court has considered the process adopted by the Disciplinary Authority and observed as under:

32. It is trite law that in disciplinary proceedings, it is not necessary for the Disciplinary Authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment if he accepts the findings recorded by the Enquiry Officer. Our view stands fortified by the decision of this Court in *Boloram Bordoloi v. Lakhimi Gaolia Bank* (2021) 3 SCC 806, wherein it was held:-

"11. . . . Further, it is well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no





further elaborate reasons are required to be given by the disciplinary authority. . . .”

33. All that is required on the part of the Disciplinary Authority is that it should examine the evidence in the disciplinary proceedings and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of the delinquent employee on the principle of preponderance of probabilities. This is precisely what was done by the Disciplinary 25 Authority and the Appellate Authority while dealing with the case of the respondent.

34. In our considered view, the Division Bench fell into grave error in substituting the standard of proof required in a criminal trial vis-a-vis the disciplinary enquiry conducted by the employer. It is a settled principle of law that the burden laid upon the prosecution in a criminal trial is to prove the case beyond reasonable doubt. However, in a disciplinary enquiry, the burden upon the department is limited and it is required to prove its case on the principle of preponderance of probabilities. In this regard, we are benefitted by the judgment of this Court in the *Union of India v. Sardar Bahadur*,²⁸ wherein this Court held as follows: -

“15. . . . A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it.





Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. . . ."

25. Similarly, in the case of **State of Karnataka v. Umesh (2022) 6 SCC 563**, the Hon'ble Supreme Court has considered the principles governing disciplinary inquiries and observed as under:

"16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.





22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
- (iv) whether the findings of the disciplinary authority suffer from perversity; and
- (v) the penalty is disproportionate to the proven misconduct.”

26. The facts of the present case clearly indicate that the Inquiry Officer did not call the witness whose statement recorded by the police was relied upon by the Disciplinary Authority, and the said statement was not part of the record before the Inquiry Officer. No opportunity of cross-examination of the said witness was afforded to the present petitioner. Thus, the principles of natural justice were not followed, as laid down by the Hon’ble Supreme Court in the case of **State Bank of Bikaner & Jaipur v. Srinath Gupta (supra)**. Therefore, both the judgments referred by the Learned Counsel for the respondents are not applicable to the facts of the present case.



27. In the case of **Kiran Thakur (supra)**, a Coordinate Bench of the Delhi High Court considered a case where an employee was found guilty of submitting forged documents to the employer. No doubt, forgery and fabrication are serious offences and must be dealt with strictly, particularly when committed by a person in government employment. However, even in such cases, the inquiry is required to be conducted strictly in accordance with the established norms and principles governing departmental proceedings. Neither the Inquiry Officer nor the Disciplinary Authority can record conclusion based on surmises and conjectures. They are duty-bound to adhere to the principles governing departmental inquiries. Therefore, the judgment in **Kiran Thakur (supra)** is also not applicable to the facts of the present case.

28. In the case of **H.L. Gulati (supra)**, Hon'ble Supreme Court has drawn a distinction between misconduct and grave misconduct. This issue was further considered by the Division Bench of this Court in the case of **Brij Mohan (supra)**. The principles laid down therein clearly indicate that it is obligatory on the part of the Disciplinary Authority to record its satisfaction as to whether the delinquent employee has committed an act of grave misconduct, grave negligence, or misconduct.

29. In the present case, the material on record clearly indicates that the petitioner was exonerated in the criminal case and there is nothing on record to show that any criminal appeal has been filed, to challenge the judgment of acquittal.





Similarly, the Inquiry Officer in the departmental proceedings has also recorded a finding that the petitioner was not guilty of either of the charges. The Disciplinary Authority has reversed these findings solely on the basis of the statement of a witness who was neither produced in the inquiry proceedings nor in criminal trial, thus no opportunity of cross-examination was provided to the present petitioner.

30. Therefore, the impugned order dated 19.08.2020 is contrary to the settled principles of law and is arbitrary and illegal. As a result, the writ petition is hereby allowed. The impugned order dated 19.08.2020 is quashed and set aside. The petitioner shall be entitled to all consequential benefits to which he would have been entitled upon quashing of the order dated 19.08.2020.
31. Misc. application, if any, is disposed.
32. No order as to cost.

(ASHOK KUMAR JAIN),J

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