

Civil Writ Jurisdiction Case No.11510 of 2000

.... **Petitioner/s**

1. Bihar State Financial Corporation through its Managing Director, Frazer Road, Patna.

2. Board of Director through Chairman, Bihar State Financial Corporation, Frazer Road, Patna.

3. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

4. Ashok Kumar, son of name not known, Assistant General Manager, Bihar State Financial Corporation, Fraser Road, Patna.

.... **Respondent/s**

Appearance :

For the Petitioner/s : **Mr. Manik Vedsen, Advocate**

Mr. Subhash Chandra Bose, Advocate

For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate

Mr. Nikhil Kumar Agrawal, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 17-07-2015

Heard learned counsel appearing on behalf of the

2. This is an application seeking quashing of an order dated 14.04.1998, passed by the Managing Director,



Bihar State Financial Corporation, Patna (*hereinafter referred to as the "Corporation"*), whereby, punishment of compulsory retirement from service of the Corporation has been imposed upon the petitioner. The said order dated 14.04.1998, was communicated to the petitioner through Memo No. 119 dated 21.04.1998 (Annexure-13 to the writ application). Against the order passed by the Disciplinary Authority, the petitioner had preferred an appeal before the Corporation. The petitioner's appeal came to be rejected during the pendency of the present writ application, as communicated to him through letter dated 22.07.2002. By way of amendment through I.A. No. 3512 of 2002, the petitioner has sought for quashing of the decision of the Appellate Authority, rejecting the petitioner's appeal as well as the said communication dated 22.07.2002 (Annexure-17 to the I.A. No. 3512 of 2002).

3. I.A. No. 3512 of 2002 stands allowed. The relief sought for in the aforesaid interlocutory application, seeking quashing of the said appellate decision and the said communication dated 22.07.2002, shall be treated to be relief sought for in the present writ application.



4. The petitioner, at the relevant point of time, was posted as Senior Assistant in Ranchi branch of the Corporation in the year 1986. On the charge that while sanctioning additional loan by the Corporation to M/S Hotel Neelkanth, Ranchi on 05.08.1986, he became a witness to the loan agreement executed by the partners of said M/S Hotel Neelkanth, including one Raj Kumari Sharma, on 21.08.1986. Allegedly, the son of said Raj Kumari Sharma, namely, Hemant Kumar Sharma, through his letter dated 05.01.1996, informed the Corporation that his mother had died of Cancer on 20.07.1985 in Tata Hospital, Bombay. The said intimation by said Hemant Kumar Sharma accompanied a death certificate in support of the fact that Raj Kumari Sharma had died on 20.07.1985 itself, which indicated that the petitioner wrongly became witness to so-called agreement between the partners of said M/S Hotel Neelkanth on 21.08.1986, shown to have been signed by a person, who was already dead.

5. It was, accordingly, alleged against the petitioner that he entered into a criminal conspiracy with another partner of the firm, namely, Rajendra Kumar Sharma,



and falsely witnessed the execution of registration of the said agreement on 21.08.1986. The chargesheet to this effect was issued vide Memo No. 40 dated 07.04.1997 (Annexure-1 to the writ application). The petitioner filed his written statement of defence and denied the charge levelled against him.

6. An Enquiry Officer was appointed for conducting the departmental proceeding. The petitioner had participated in the departmental enquiry. The Enquiry Officer conducted the enquiry on 07.01.1998 and held the charge levelled against the petitioner to have been proved.

7. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed upon the petitioner the punishment of compulsory retirement from the service of the Corporation vide order dated 14.04.1998, as noted above. The petitioner's appeal came to be rejected by an order dated 22.07.2002. The aforesaid two orders are under challenge in the present writ application.

8. Mr. Manik Vedsen, learned counsel appearing on behalf of the petitioner, has contended that the Corporation proceeded on the letter written by said Hemant



Kumar Sharma to the effect that her mother died of Cancer on 20.07.1985, i.e., prior to the date when the said agreement was said to have been executed on 21.08.1986 by her, which was witnessed by the petitioner. He submits that said Hemant Kumar Sharma was not brought as witness by the Corporation to prove the fact that said Raj Kumari Sharma had died on 20.07.1985. He has submitted that, as a matter of fact, there was no cogent evidence before the Enquiry Officer to come to the conclusion that said Raj Kumari Sharma had died prior to the date of execution of the agreement dated 21.08.1986. He has contended that no effort was taken by the Enquiry Officer or the Corporation to compare the signature of said Raj Kumari Sharma occurring on the agreement dated 21.08.1986, with her admitted signature. He has, accordingly, submitted that the entire finding of the Enquiry Officer, based merely on the letter of said Hemant Kumar Sharma, is perverse. In order to assail the order passed by the Appellate Authority, he has submitted that the order of the Appellate Authority is non-speaking and the Appellate Authority has not taken into account the points raised by the petitioner in his memo of Appeal against the order of

punishment of compulsory retirement from the service of the Corporation.

9. Learned counsel appearing on behalf of the Corporation, on the other hand, has submitted that the Enquiry Officer, considering all the facts and circumstances of the case and the materials available before him, came to a conclusion that the petitioner failed to notice that said Raj Kumari Sharma in the application for additional loan had put her signature in Hindi, whereas, in the first loan document, the partners had signed in English. He has submitted that the lapse on the part of the petitioner was found to be proved by the Enquiry Officer and the findings arrived at by him, cannot be said to be perverse, as the findings are based on some material and appreciation of some evidence available on record.

10. Upon perusal of the chargesheet and the enquiry report, I find that the charge of misconduct framed against the petitioner was solely based on the letter dated 05.01.1996, written by Hemant Kumar Sharma alleging that he (the petitioner) became witness to an agreement signed by a person, who was already dead on the date of execution of



such agreement. In order to prove this charge against the petitioner, in my opinion, the person, who had made a complaint to this effect, was a crucial witness, who ought to have been examined, during the course of departmental enquiry. I do not find any explanation, anywhere, as to why the complainant, Hemant Kumar Sharma, was not summoned as witness in course of the departmental enquiry as the very initiation of the departmental proceeding against the petitioner was based on his complaint. What has been found by the Enquiry Officer in his report is that the petitioner failed to compare the signature of said Raj Kumari Sharma in the additional loan agreement with the signature which she had put in her first loan document. In my opinion, even this finding/observation will not constitute a misconduct warranting and disciplinary action against the petitioner in the absence of any allegation of ill motive.

11. It has been submitted on behalf of the petitioner that there is no allegation of any financial loss caused to the Corporation because of the said additional loan of Rs. 3.10 lakhs sanctioned upon the said agreement dated 21.08.1986. My attention has been drawn towards a letter of



said Hemant Kumar Sharma dated 12.03.1987 (Annexure-15 to the writ application), wherein, he is said to have stated that his mother, Raj Kumari Sharma, died in the year 1987 and it has been submitted that the said document was there on record of the Corporation before initiation of the departmental proceeding against the petitioner. Since the petitioner did not have any access to the said document, he could not produce that in support of his defence in course of the departmental enquiry. There is specific statement to this effect in Paragraph-22 of the writ application, which has not been denied by the Corporation.

12. Learned counsel appearing on behalf of the petitioner, in my opinion, appears to be right in his submission that in order to prove the nature of charge levelled against the petitioner in the departmental proceeding, the complainant must have been examined on the basis of whose letter, the departmental proceeding was initiated. Non-examination of said complainant, in course of the departmental enquiry without any explanation for his non-examination, in my view, has vitiated the findings arrived at by the Enquiry Officer as well as action taken by the

Disciplinary Authority on such findings.



13. As has been held by Supreme Court in case of *“Commissioner of Police, Delhi and Others Versus Jai Bhagwan”* reported in *“(2011) 6 Supreme Court Cases 376”*, non-examination of the complainant during the departmental enquiry takes away the proceedee right to cross-examine such complainant. The reasoning assigned by the Enquiry Officer for recording the finding that the charge against the petitioner stood proved, cannot be accepted in the absence of any cogent evidence that said Raj Kumari Sharma had died, in fact, prior to the date of execution of the agreement dated 21.08.1986. There appears to be no evidence in support of this fact except one communication said to have been sent by said Hemant Kumar Sharma. Even the said letter could not be proved in course of departmental enquiry as the author of the said letter was not examined.

14. In view of the above, I find that the order of the Disciplinary Authority, imposing punishment of compulsory retirement on the petitioner dated 14.04.1998 (Annexure-13 to the writ application), cannot be sustained and is, accordingly, quashed. Since I am of the view that the findings recorded by the Enquiry Officer as well as by the



Disciplinary Authority are based on no evidence, the order of the Appellate Authority, affirming the order imposing punishment, also cannot be sustained. Accordingly, the order dated 14.04.1998, passed by the Managing Director of the Corporation, issued through Memo No. 119 dated 21.04.1998 (Annexure-13 to the writ application) and the decision of the Appellate Authority, rejecting the petitioner's appeal, communicated through letter dated 22.07.2002 (Annexure-17 to the I.A. No. 3512 of 2002) are quashed. This application is, accordingly, allowed.

15. It has been stated at the Bar that the petitioner attained the age of superannuation in the year 2005 itself and, therefore, there would be no question of any directions for his reinstatement in service of the Corporation. However, the petitioner shall be entitled for other consequential benefits consequent upon quashing of the order of punishment, which will include the payment of salary etc. for the period during which he remained out of service of the Corporation because of the impugned order dated 14.04.1998, if he furnishes an affidavit before the Disciplinary Authority that he was not gainfully employed elsewhere during the said period.

16. Learned counsel for the petitioner has submitted that in the facts and circumstances of the case, the petitioner should be held to be entitled for full salary for the period during which he remained under suspension. I direct the Disciplinary Authority to take a decision with respect to payment for the period during which the petitioner had remained under suspension, in view of the quashing of the order, imposing punishment upon the petitioner. Such decision must be taken within a period of two months from the date of receipt/production of a copy of this judgment.

17. As regards arrears of salary/emoluments, the respondents are directed to ensure payment to the petitioner within a period of six months from the date of receipt/production of a copy of this judgment, if they do not have any cogent evidence to the effect that the petitioner was gainfully employed elsewhere.

18. This application stands allowed with the direction as above.

19. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

U			
---	--	--	--