

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.916 of 2014
IN
Civil Writ Jurisdiction Case No. 8296 of 2007**

- =====
1. The Bihar State Financial Corporation through its Managing Director.
 2. The Managing Director, Bihar State Financial Corporation.
 3. The Board of Directors, Bihar State Financial Corporation through its Chairman.
 4. The Manager (P & A), Bihar State Financial Corporation. all having their offices at BSFC Building, Frazer Road, Police Station Gandhi Maidan, District Patna - 800001.

.... Appellants

Versus

Anand Deo Kanshyakar, son of Sri Saryu Prasad, resident of Mohalla - Gurhatta, P.O. - Jhauganj, Police Station Khajekalan, Patna City and District - Patna.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Partha Sarthy, Advocate
For the Respondent/s : Mr. Shrawan Kumar, Sr. Advocate with
Mr. Rajiv Nayan Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 19-11-2016

Heard learned counsel for the appellant-Bihar State Financial Corporation and learned counsel for the respondent.

The appeal is directed against the order dated 6.8.2013 passed in CWJC No. 8296 of 2007 by a learned Single Judge of this Court by which the order dated 21.8.2001 of the Disciplinary Authority and the order dated 16.7.2003 of the Appellate Authority have been set aside and the writ application has been allowed with all consequential benefits.



While the writ petitioner-respondent in the appeal was posted as Manager, Gaya Branch Office of the appellant Bihar State Financial Corporation, an old jeep bearing registration No. BHI-6518 was stolen from the premises of the said branch office. Earlier the insurance of the jeep was valid till 30.11.1985, and the valuation of the same was given at Rs.80,000/- by the Insurance Company. The writ petitioner claimed to have been on leave from 28.11.1985 to 30.11.1985 and immediately after coming back he had issued a cheque dated 2.12.1985 to the Agent of the Insurance Company, who had received the same but did not handover the cover note. The cover note of the Insurance Company was issued on 5.12.1985 showing the time as 4 P.M. For the said reason the Insurance Company had rejected the claim.

On 31.5.1993 a show cause notice was issued to the respondent stating that necessary action for renewal of the insurance was not initiated by him in time on account of serious lapses and gross negligence of duties on the part of the respondent whereby the Corporation suffered a loss of Rs.80,000/- and, accordingly, the respondent was asked to show cause as to why recovery of the said amount be not done from the pay of the respondent in terms of Regulation 39(i) of BSFC(Staff) Regulations, 1965. After receiving reply to the said show cause, a charge memo dated 26.5.1995 was



issued framing four charges against the respondent, all pertaining to the theft of the jeep and the loss of Rs.80,000/- caused thereby to the Corporation. The respondent was directed by the charge memo to show cause before the enquiry officer within three weeks from the service of the charge memo as to why recovery of Rs.80,000/- be not made from his salary under the provisions of Regulation 39 of BSFC(Staff) Regulations, 1965. The respondent filed his reply before the enquiry officer. The enquiry officer gave his report on 25.2.1999 finding the respondent guilty of charge Nos. 1, 3 and 4, while exonerating the respondent from charge No.2. Thereafter copy of the enquiry report was given to the respondent and he gave his reply to the second show cause on 15.4.1999. Thereafter, the impugned order dated 21.8.2001 was passed by the Managing Director of the Corporation holding that the charges are serious against the proceedee which have been proved and considering the gravity of the charges the respondent was reduced in rank/pay scale by demotion to the rank of Deputy Manager (in the pay scale of Rs.3000-4500) at the initial point with immediate effect. The appeal against the said order of the disciplinary authority was rejected by the Board of Directors of the Corporation at its meeting held on 16.7.2003. Aggrieved by the same the respondent filed the writ application which has been allowed as stated above.



The learned Single Judge has allowed the writ application for several reasons. The first is that there was nothing on the record to show the reason for disagreement with the enquiry report and imposing major punishment on the petitioner-respondent, whereas it is settled law that if the disciplinary authority intends to differ with the enquiry report he has to assign reasons for differing with the same.

The second ground for allowing the writ application was that it was a stale matter since departmental proceeding itself was initiated 10 years after the alleged misconduct and even after the order of punishment when the petitioner filed appeal, no decision was taken by the appellate authority and in the meantime the petitioner retired from service on 30th April, 2003 and only after retirement of the petitioner the appellate authority rejected the appeal without assigning any reason. In support of the said ground reliance is placed on the case of State of Madhya Pradesh vs. Bani Singh and another : (1990) Supp SCC 738.

Learned counsel for the appellant Corporation submits that it is not a case where the disciplinary authority had differed from the finding of the enquiry officer, rather out of the four charges three charges had been proved which has been taken note of while issuing the second show cause notice to the respondent and the punishment has been inflicted only on the charges that had been proved and not on



the charge which had not been proved by the enquiry officer. It is urged that no reliance had been placed on the charge which was not proved and, therefore, there was no occasion for differing with the findings of the enquiry officer and assigning reason for the same.

It is also submitted by learned counsel that the reliance ought not to have been placed by the learned Single Judge on the decision of the Supreme Court in Bina Singh's case (supra) as the same was decided in very different circumstances. It is pointed out that in Bina Singh's case departmental proceedings having been initiated after 12 years the same upon being challenged before the Administrative Tribunal had been quashed which had been upheld by the Apex Court. In the present matter it is submitted that the respondent having participated in the departmental proceedings it was not open to him after the proceedings resulted in punishment to have turned around and challenged the result of the departmental proceedings. It is, therefore, urged that the order passed on conclusion of the departmental proceedings and on appeal could not have been set aside on the ground of staleness.

It is further submitted by learned counsel that in writ proceedings a departmental proceeding can be set aside only on the limited point of non-compliance of the prescribed procedure, or taking into consideration the irrelevant materials or non-consideration of the



relevant materials, which grounds are not available in the present matter.

It is also submitted by learned counsel that if the appellate authority has not given reasons in its order then on that ground the order while being set aside ought to have been remanded to the disciplinary authority to give reasons.

Learned counsel for the respondent, on the other hand, submits that all the charges are interconnected and therefore if the charge No.2 had been held to be not proved, then no punishment could have been inflicted on the basis of the other charges without assigning any reason for differing with the findings on the second charge.

It is further pointed out that both the show cause dated 31.5.1993 as also the draft charge memo dated 26.5.1995 only had directed the respondent to show cause as to why recovery of Rs.80,000/- be not made in terms of Resolution No.39 and thus it was not open to the appellant to have passed an order of major punishment in the matter when the proceedings themselves were only for recovery.

The principal submission of learned counsel for the respondent, however, is that even the order of the disciplinary authority does not show any application of mind as the entire order is



a mere recital of the different stages from issuing of show cause to the enquiry report without any consideration of the facts and circumstances and the grounds taken by the petitioner-respondent and in particular those taken in the reply to the second show cause filed by the petitioner.

Learned counsel also submits that the departmental proceedings suffer from staleness as the same could not have been initiated 10 years after the alleged incident and even the show cause notice issued on 31.5.1993 having been replied by the respondent and no action taken, thereafter it was not open to the appellant to have initiated the departmental proceedings after 10 years.

We have considered the submissions of learned counsels for the parties. This Court is in agreement with the submission of learned counsel for the appellant that it was not a matter where the reasons had to be assigned by the disciplinary authority for differing with the findings of the enquiry officer in the second show cause notice that was issued to the respondent as the same had been issued only on the basis of the proved charges clearly found against him; thus there was no requirement by the disciplinary authority for giving reasons for differing with the findings of the enquiry officer with regard to charge No.2 and the punishment has also been inflicted only on the basis of the charges that have been proved and not on the basis



of the charge that has not been proved.

On the question of staleness also, we are clearly of the view that no reliance could have been placed upon the decision of the Supreme Court in Bani Singh's case (supra). In the said case the proceedee had immediately challenged the initiation of proceedings after a lapse of 12 years on the ground of delay and laches and the same had been accordingly quashed by the Administrative Tribunal which was upheld by the Supreme Court. In the present matter the respondent did not challenge the issue of the charge memo after 10 years from the incident, and chose to participate in the departmental proceedings and only after the impugned order was passed by the disciplinary authority and by the appellate authority he appears to have chosen to raise the said issue before this Court. We are of the view that such course of action was not permissible to the respondent. A mere delay in initiating and concluding departmental proceedings cannot be a ground for quashing the final order that had been passed if no challenge had been made to the initiation of the said proceedings at the outset; the respondent having participated in the departmental proceedings, cannot be permitted to turn around and challenge the order passed against him on the ground of delay and laches.

We are, however, in agreement with the submission of learned counsel for the respondent that the impugned order dated



21.8.2001 passed by the disciplinary authority, the Managing Director of the Corporation, suffers from non-application of mind. It appears that the order from paragraphs 1 to 4 is a mere recital of the different stages from initiation of the departmental proceedings till the issuance of the show cause, including a reference to the charges in paragraph-2 thereof. Thereafter all that the disciplinary authority has said is that he had perused the charge-sheet, the show cause and the enquiry report of the conducting officer and also perused the second show cause of the proceedee and other relevant facts and materials on the record and arrived at a conclusion that the charges were serious against the proceedee which had been proved and thereafter after considering the gravity of the charges he awarded the punishment. There is absolutely nothing in the said order dated 21.8.2001 to show that the disciplinary authority had applied his mind to the facts of the case and the stand taken by the proceedee with respect to the findings of the enquiry officer in the second show cause filed by the respondent. It is thus a clear case where the punishment has been inflicted by the disciplinary authority without a proper application of mind.

So far as the order of appellate authority is concerned, the same clearly does not show any application of mind.

The submission of learned counsel for the appellant that in case an order is set aside on the ground of non-application of mind



the same ought to be remanded to the concerned authority for passing a fresh order in accordance with law, is normally the practice followed by this Court.

In the present matter, however, we find that the respondent had retired from service on 30th April, 2003 and there was delay also in the initiation of departmental proceedings, which even though we have held was not fatal to the proceedings because of the participation of the respondent in the same, but considering the passage of so many years, i.e., 31 years, since the incident had taken place, it would be inequitable to remand the matter to the disciplinary authority at this stage.

For the aforesaid reasons, the appeal is dismissed but for the reasons as stated in this order.

(Ramesh Kumar Datta, J)

spal/-

(Rajendra Kumar Mishra, J)

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