

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.94 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 1856 of 2008

Along with

Interlocutory Application No. 393 of 2015

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Baijnath Prasad, S/o Late Bishwanath Prasad. R/o Village - Turhatoli, P.S.-
Danapur, Dist.- Patna and at present discharged Clerk of Central Bank of India,
Harpur Hardas Branch Muzaffarpur, Region. (Writ Petitioner)

.... Appellant/s

Versus

1. The Central Bank of India through its Zonal Manager, Zonal Office, Pawapuri House, Bhagwanpur Chowk, Muzaffarpur.
2. The Zonal Manager-cum-Appellate Authority, Central Bank of India, Zonal Office, Pawapuri House, Bhagwanpur Chowk, Muzaffarpur.
3. The Regional Manager cum Disciplinary Authority, Central Bank of India, Speaker Chowk, Post Box No.- 58, Muzaffarpur.

.... Respondents / Respondents

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With

Letters Patent Appeal No. 547 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 1856 of 2008

Along with

Interlocutory Application No. 2411 of 2015

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1. The Central Bank of India through its Zonal Manager, Zonal Office, Pawapuri House, Bhagwanpur Chowk, Muzaffarpur.
 2. The Zonal Manager-cum Appellate Authority, Central Bank of India, Zonal Office, Pawapuri House, Bhagwanpur Chowk, Muzaffarpur.
 3. The Regional Manager-cum-Disciplinary Authority, Central Bank of India, Speaker Chowk, Post Box No. 58, Muzaffarpur.

(Respondents in the Writ Petition)

.... Appellants

Versus

Baijnath Prasad, Son of Late Bishwanath Prasad, resident of Village- Tarhatoli, Police Station- Danapur, District- Patna. At present discharged clerk of Central Bank of India Harpur Harda Branch (Muzaffarpur Region).

(Petitioner in Writ Petition)

.... Respondent

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Appearance:

(In LPA No. 94 of 2015)

For the Appellant/s : Mr. Saurabh Kumar with
Mr. Md. Salahuddin Khan, Advocates.

For the Respondent/s : Mr. Ajay Kumar Sinha, Advocate.

(In LPA No. 547 of 2015)

For the Appellant/s : Mr. Ajay Kumar Sinha, Advocate

For the Respondent/s : Mr. Saurabh Kumar, Advocate with
Mr. Md. Salahuddin Khan, Advocates

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 04-04-2016

Interlocutory Application No. 393 of 2015

Interlocutory Application No. 393 of 2015 has been filed by the applicant-workman for condonation of delay of 141 days in filing the Letters Patent Appeal No. 94 of 2015.

For the reasons mentioned in the Interlocutory Application, we find that the appellant has made out sufficient cause for seeking condonation of delay. The delay is condoned.

Consequently, Interlocutory Application No. 393 of 2015 is allowed.

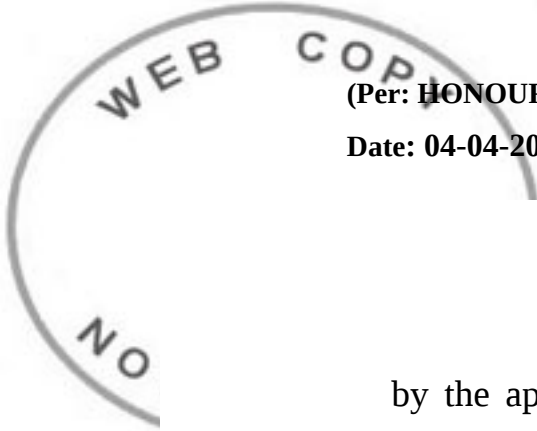
Interlocutory Application No. 2411 of 2015.

Interlocutory Application No. 2411 of 2015 has been filed by the applicant-Bank for condonation of delay of 107 days in filing the Letters Patent Appeal No. 547 of 2015.

For the reasons mentioned in the Interlocutory Application, we find that the appellant has made out sufficient cause for seeking condonation of delay. The delay is condoned.

Consequently, Interlocutory Application No. 2411 of 2015 is allowed.

Letters Patent Appeal No. 94 of 2015 and



Letters Patent Appeal No. 547 of 2015.

This order shall dispose of LPA No. 94 of 2015 preferred by Baijnath Prasad (hereinafter referred to as “the applicant”) and LPA No. 547 of 2015 filed by the Central Bank of India against the judgment dated 02.07.2014 whereby the learned Single Bench has set aside the order of punishment and remitted the matter to the appellate authority to pass a fresh order while maintaining that there is no procedural infirmity in the departmental proceedings.

2. The facts, in brief, are that the applicant represented himself as only 8th pass, on the basis of which, he was appointed as Peon in Central Bank of India, Main Branch, Muzaffarpur on 17.02.1992. He had mentioned his date of birth at the time of his appointment as ‘20.08.1970’. The maximum qualification fixed for appointment as Peon at that time was 8th pass. Subsequently, he appeared in Matriculation Examination with permission of the Bank in the year 1994 and, on the basis of such qualification, promoted to the post of Clerk on 01.12.1995.

On the basis of a complaint against the applicant that he was a student of Intermediate of Laxmi Narayan College, Bhagwanpur way back in the year 1982 and a student of Raj Narain College, Hajipur in Math (Hons.) in the Session 1982-84 and that as per the college record, his date of birth was ‘25.03.1964’, an enquiry



was conducted. A charge sheet was served upon the applicant. In inquiry, it was found that the charges stand proved against the applicant and, therefore, an order of discharge was passed on 05.02.2003. An appeal against the said order was dismissed by the Zonal Manager-cum-Appellate Authority on 23.07.2007. In a Writ Petition challenging the order of discharge, the learned Single Judge recorded the following directions:

“9. I have heard the counsel for the parties. I do not find any procedural infirmity in the departmental proceeding. The petitioner got employment in the year 1992 by projecting himself as 8th pass, though he was a matriculate. The materials produced in course of enquiry, duly established that in fact petitioner passed matriculation examination in the year 1979, which fact he concealed and falsely submitted that he was only class 8th pass in 1992. He, however, again appeared in Matric examination in 1994-95 with a different date of birth to get promotion to higher rank.

10. Now that it is established that petitioner had concealed his higher qualifications to secure employment, we would now consider whether the quantum of punishment of dismissal is disproportionate to offence committed.”

3. However, the learned Single Bench interfered with the order of punishment imposed upon the appellant on the ground that on



10.01.1977, a Circular was issued that if a person, by concealing higher qualification, has got appointment in the Bank on the post of Peon, he would be punished by levying a penalty of stoppage of one increment permanently. Though the stand of the Bank was that such circular was one-time-measure to contain the mistakes committed till that time but the learned Single Judge found that the punishment of discharge awarded to the applicant is excessive and harsh and, consequently, set aside the said order of punishment.

4. In exercise of power of judicial review, this Court examines the decision-making-process and not the decision. There is no procedural infirmity pointed out by the learned Single Bench. The learned single Judge has interfered with the order of punishment only on the ground that it is excessive and harsh.

5. In ***B.C. Chaturvedi v. Union of India*** reported in **(1995) 6 SCC 749** and ***Mithilesh Singh v. Union of India*** reported in **(2003) 3 SCC 309**, the Hon'ble Supreme Court has held that in exercise of power of judicial review, the High Court will not interfere with the order of punishment as the High Court examines only the decision-making-process. In view of the said judgments, the learned Single Judge could not have interfered with the order of punishment only for the reason that it is excessive and harsh. The Supreme Court has reviewed the decisions on the subject recently in a judgment



stoppage of increment with or without cumulative effect can be imposed. Therefore, the Circular dated 10.01.1977 has been given effect to while contemplating such punishment even subsequent to such circular. Therefore, the Learned Single Judge has rightly interfered with the order passed and that the applicant is entitled to back wages for the intervening period.

7. We do not find any merit in the said argument. The Clause 6 of the terms of settlement provides different punishments which can be imposed including ranging from an order of punishment of dismissal without notice and/or fine etc. Therefore, what should be the punishment awarded to a delinquent lies in the discretion of the disciplinary authority. Once the disciplinary authority has exercised discretion to impose a particular punishment, i.e., discharge without any bar for further employment, this Court in exercise of judicial review could not have interfered with the quantum of punishment. The settlement referred to by the learned counsel for the applicant has no condition that in case an employee conceals his higher qualification at the time of appointment, he would be imposed with only punishment of stoppage of one increment. Such condition was in the Circular dated 10.01.1977 but such circular was intended to give benefit to those employees who were in service at that time. The applicant joined much later. Therefore, on account of the misconduct

on the part of the applicant in not disclosing his higher qualification, he has made himself liable for the punishment of discharge. Such punishment is in terms of the bipartite settlement.

8. In view thereof, LPA No. 94 of 2015, filed by the applicant, is dismissed and that of LPA No. 547 of 2015, filed by the Bank, is allowed. The order passed by the learned Single Bench setting aside the order of punishment is consequently set aside. The Writ Petition is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Dilip/Anjani.
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