

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.877 of 2017  
IN  
Civil Writ Jurisdiction Case No. 15312 of 2015**

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Rupak Kumar Son of late Braj Bhushan Mishra, All Resident of Village-  
Jagdishpurbaghnagari, P.S.-Sakra, Dist.-Muzaffarpur (Petitioner).

.... .... Appellant/s

Versus

1. State Bank of India Through The Chairman, State Bank of India, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai-400021
2. The Chief General Manager, State Bank of India, India, Local Head Office, West Gandhi Maidan, Patna.-800001
3. The General Manager (Network-!), State Bank of India, Local Head Office, West Gandhi Maidan, Patna-800001
4. The Deputy General Manager & Appellate Authority, State Bank of India, Administrative Officer, J C Road, Patna-800001
5. The Regional Manager & Disciplinary Authority, Region-1, State Bank of India, Regional Business Office, J C Road, Patna-800001 (Respondents)

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Bipin Krishna Singh, Adv.

For the Respondent/s : Mr. Chitranjan Sinha, Sr. Adv.

Mr. Sanjiv Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 16-04-2018**

Heard counsel for the appellant and counsel for the State  
Bank of India.



Award passed by the Central Government Industrial Tribunal on 23.02.2015 in Reference Case No. 124 of 2013 was under challenge before the Writ Court. Since the learned Single Judge refused to interfere with the order of removal of the appellant and affirmed the award, the present Letters Patent Appeal has been filed assailing the decision or decisions.

A reference was made by the Government of India, Ministry of Labour in exercise of power under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The term of reference was “whether the action of management of State Bank of India to propose the punishment of removal of Sri Rupak Kumar was proportionate? If not, to what relief the workman concerned is entitled for?”

The basic charge which was brought up against the appellant by the management was that at the time of appointment in the Bank he submitted a School Leaving Certificate dated 16.09.1996 indicating that he had studied till Class-IX when the fact was that he had already passed his matriculation examination from Bihar School Examination Board in the year 1992. This fact was suppressed. The other allegation was that he produced subsequently a certificate of passing matriculation examination in the year 2002 thereby concealing the fact of having passed the matriculation examination earlier in the year 1992. These facts were considered serious



omission on the part of the employee which necessitated initiation of a departmental inquiry.

The appellant was appointed as a Messenger which is a subordinate cadre in the State Bank of India on 03.05.2000. After having put in about 6-7 years of service on the basis of avenues available for promotion to such Class-IV employees, he participated and earned a promotion as an Assistant in the clerical cadre on 08.11.2007. While he was posted as an Assistant in Region-1 in the administrative office at Patna an anonymous complaint was received that the appellant had concealed his higher qualification at the time of his appointment in the subordinate cadre and this formed the basis for initiation of an enquiry by the Assistant General Manager (Vigilance) who was saddled with the responsibility to find out the truth. The enquiry threw up a fact that based on a School Leaving Certificate on 16.09.1996 from High School, Bharwari in the District of Muzaffarpur where he was shown to be studying in Class-IX, he earned an appointment under the Bank on the basis of minimum 8<sup>th</sup> class pass. There was concealment by him, since he was a matriculate at the time of appointment. The year for passing matriculation examination is said to be 1992. It is said that the facts were verified with the Bihar School Examination Board which certified that he had passed the matriculation examination in the year



1992.

Based on the report of the Investigating Authority, the Disciplinary Authority issued him a memo seeking his explanation as to why a disciplinary proceeding be not initiated against him for the so called misconduct. The appellant responded to the show cause. He denied the charges. However, the Bank decided to proceed with a disciplinary proceeding and based on the finding with regard to the said suppression the Disciplinary Authority decided to impose punishment of removal. That order became a subject matter of reference to the Industrial Tribunal which held the finding given by the Inquiry Officer to be correct and, therefore, the corresponding punishment also to be warranted in the facts.

When a challenge was thrown to the said award, the learned Single Judge dismissed the writ application refusing to interfere with the finding.

The learned counsel for the appellant submits that the main essence of the dispute has been lost out by all the authorities. The allegation made against the appellant was that despite he being a matriculate at the time when he applied for a job under the Bank he showed himself to be 8<sup>th</sup> pass and gained employment in the Bank. He worked satisfactorily without any kind of allegation or any kind of complain against him and after seven years he also earned a



promotion and at that point of time with due leave and permission from the Bank he sat for matriculation examination, qualified a second time and on the basis of success both in the matriculation examination as well as the examination held for the promotion he was granted promotion to the post of Assistant, which is a clerical cadre. The problem seems to have begun for the appellant thereafter because somebody made a complaint against the appellant who was not happy with the achievement he had earned in life through dint of his hard work.

The question which arises for consideration primarily is as to how serious is the suppression or non-disclosure by the appellant to gain entry into the Bank.

Looking at the limited employment avenues, which are open in the country, if the appellant realized that the higher qualification may not help him beget employment and if lesser qualification which is not a matter of dispute does not bar him from participation and appointment, the non-disclosure to that extent cannot be said to be of such a serious nature which should cost his job.

The appellant worked in the Bank for almost seven years when he was also granted promotion on the basis of exercise done and no doubt with due leave of the Bank, he participated in the matriculation examination.



The Court questioned the learned senior counsel representing the Bank whether after appointment of the appellant and during the entire length of his service till he was removed which works out to almost 13 years was there any allegation or any inquiry held against him for any kind of misconduct, omission which will have reflection on his working on the Bank or it in any manner jeopardize the working or reputation of the Bank.

There is no input and there is no pleading that there was anything against the appellant and/or there was any allegation with regard to his working on the posts which he held under the Bank during his tenure as an employee of the Bank.

In our opinion, therefore, it was not one of those cases of such serious nature that the matter required punishment of removal.

If any of the act of the appellant in relation to such suppression if at all amounted to a misconduct while performing his duty after his appointment both on the post of Messenger or as an Assistant after promotion then this Court may not have interfered with the decision of the learned Single Judge or even the Industrial Tribunal. Since none of the action of the appellant is a reflection on the working or reputation of the Bank and there is no allegation of any kind besides the above fact that he did not truthfully disclose his matriculation qualification, at the time of gaining entry, the



allegation is not of such a serious nature where the punishment of removal, which leads to unemployment of the appellant after 13 years of service in the Bank, was necessitated. Any other minor punishment could have been a deterrent to him when he was otherwise an efficient employee with a clean past.

In the above circumstances, despite the submission made on behalf of the Bank that such suppression or non-disclosure is a serious matter, we are not convinced that the case of the present appellant in any manner comes within any of the category of serious omission or misconduct which necessitated removal from service.

We are satisfied, therefore, that the order of removal which had been passed and upheld by the Tribunal was uncalled for on the principle of disproportionality since it is shocking to the conscience and, therefore, the impugned orders, which is order dated 23.02.2015 passed in Reference Case No. 124 of 2013, the order or judgment dated 20.04.2017 passed by the learned Single Judge upholding the decision as well the order of punishment dated 20<sup>th</sup> March, 2013 passed by the Disciplinary Authority and the order dated 29.06.2013 passed by the Appellate Authority also stands quashed. The appellant shall be restored back in service. However, the Court grants liberty to the Disciplinary Authority to pass such order of punishment commensurate with the so called misconduct not



amounting to dismissal or removal.

Appeal stands allowed.

**(Ajay Kumar Tripathi, J)**

**(Nilu Agrawal, J)**

Rajesh/Devendra

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 23.04.2018 |
| Transmission Date | NA         |

