

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4504 of 2015**

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Basudeo Paswan son of Late Lakhraj Paswan, resident of Village- Fazlichak,  
Post- Bankipur Macchatiawan, P.S.- Fatuha, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Department of Industry, Government of Bihar, Patna
2. Bihar State Financial Corporation, through its, Managing Director, Fraser Road, Police Station- Gandhi Maidan, District Patna
3. Managing Director, Bihar State Financial Corporation, Fraser Road, Police Station- Gandhi Maidan, District Patna
4. Deputy Manager (P & A), Bihar State Financial Corporation, Fraser Road, Police Station- Gandhi Maidan, District Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Rajesh Kumar Singh  
For the Respondent/s : Mr.Ram Balak Mahto

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 10-05-2019**

Heard counsel for the petitioner and counsel for the respondents-State.

Issue under consideration in the instant proceeding is whether punishment of compulsory retirement which has been awarded to the petitioner, a clerk in the respondent-Corporation is sustainable in the eye of law or not. The consequence of the same is that the petitioner has been deprived of benefit of earned leave. Other than that all other retiral benefits have been made available to the petitioner.

The proceedings were based on charge memo dated 04.10.1999 wherein substance of the allegations are that in a draft



sale order petitioner had mentioned requirement of initial cash down payment to be 50% of the balance outstanding. At another place in the same draft entire balance of outstanding has been mentioned. Department's stand is that it should have been 25% of the balance outstanding. Other allegation is that he had mentioned rate of interest 17.50 with quarterly rest instead of 18 % quarter rest.

The said omission and commission are alleged to be utter careless, disobedience of order and wilful negligence of duty. It has sweepingly been alleged that it was with ulterior motive. There is no charge that same has been done by the petitioner to grant benefit to any particular person. Even otherwise two acts of negligence attributed against the petitioner are irreconcilable. One would have the effect of prejudicing the purchaser whereas other would have the effect of benefiting purchaser. In the circumstance, it is not possible to conclude that there was any particular motive benefiting anyone as a result of alleged negligence.

On this score, petitioner's counsel places reliance on decisions of the Apex Court in case of Union of India and others vs. J. Ahmed reported in 1979 (2) SCC 286 as also judgment in the case of Ravi Yashwant Bhoir vs. District Collector, Raigad &



others reported in 2012 (4) SCC 407. It is submitted that in absence of any allegation that said omission and commission in the draft was to grant specific benefit to a particular person or was done by some ulterior motive, allegations could not constitute a misconduct. At best the same would be termed as an act of negligence or oversight by the petitioner. He submits that after draft sale order had been prepared by the petitioner, the same was subjected to screening at three stages before sale order was finalized by the Zonal head. In that process alleged omissions and commission in the draft sale notice had been rectified before sale order was finally issued. Effect of the said omission and commission was also not causing any prejudice to the interest of the Corporation and/or had not resulted in any benefit to anyone.

Counsel for the Corporation, on the other hand, submits that the petitioner cannot disown his own liability merely for the fact that omission and commission had been detected after issuance of order. Fourth charge in charge memo was alleging that the petitioner in collusion with one R.K.Singh had hidden attendance register to cover up his late coming on 02.06.1999.

Submission of the petitioner is that said allegation is baseless and no witness had deposed in his presence in support of the said charge. It is submitted that neither Rajeev Dubey, peon nor



A.K. Pandey were examined in presence of the petitioner, nor petitioner was granted any opportunity for cross-examine the witness. Proceeding on account of said procedure adopted by Enquiry officer is unsustainable in law.

It is submitted by the counsel for petitioner that since second show cause notice was received by him late, he could not respond to the same. However, in appeal he had highlighted infirmity and the same has been rejected by cryptic order without assigning any reason by the appellate authority. The order of the appellate authority reads as follows:-

“After perusal of the relevant files/records and due deliberation, the Board decided to reject the appeal of Shri Basudeo Paswan, Ex-Clerk, as his punishment is appropriate in view of the serious charges proved against him.”

As regards omission and commission in the draft sale order, this court has gone through the same which is annexed in annexure 2. Same has not been disputed or denied by the respondents, though a counter affidavit has been filed. From perusal of the same, it appears that defence of the petitioner that draft was merely a correction of earlier draft and that he had mentioned the current requirements is born from annexure 2 to writ petition. Charge itself is not sustainable, on bare perusal of draft sale letter. Even if there is any omission and commission,



then the same was apparently a mistake due to oversight and could not constitute misconduct forming any basis of punishment order against the petitioner.

As regards concealing of attendance register on a particular date, this court would observe that in isolation such a lapse, even if committed could not be conceived to be an allegation justifying the punishment of compulsory retirement of the petitioner.

Specific plea of the petitioner is that charge was established without examining witness in his presence and without any opportunity of cross-examination has not even been considered by the appellate authority. This court would take note of the fact that setting aside order of compulsory retirement would only give rise to benefit of earned leave to the petitioner.

In the facts and circumstances hereinabove, order of Disciplinary authority dated 15.12.2001 issued by the Managing Director of the Corporation is quashed. Order of the appellate authority is also quashed as same is without assigning any reason and showing total non-consideration of the case of the petitioner. The order of appellate authority is unsustainable for the said reason as per law laid down by the Apex Court in the case of Kranti Associates Private Limited and another vs. Masood Ahmed



Khan and others reported in (2010) 9 Supreme Court Cases page 496 wherein the Apex Court has held requirement of assigning reason. As a result of quashing of orders, petitioner would be entitled to all consequential benefits.

Writ petition stands allowed.

**(Madhuresh Prasad, J)**

s.hassan/-

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