

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.844 of 2018**  
**In**  
**Civil Writ Jurisdiction Case No.6455 of 2011**

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1. The State of Bihar
2. The Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
3. The Secretary, Department of Industries, Govt. of Bihar, Patna.
4. The Joint Secretary, General Administrative Department, Government of Bihar, Patna.
5. The Joint Secretary, Industrial, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

Jai Balak Prasad Son of Late Shiv Balak Das, Resident of Village-Khoridharpur, P.O.- Fatua, P.S.- Khusropur, District- Patna.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sushil Kumar Singh, Ac To Aag 13  
For the Respondent/s : Mr. Sunil Kumar Karn, Advocate

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 23-08-2022**

The present appeal is listed for the third time. However, learned counsel for the State is seeking time to address the argument. We refused to adjourn the matter.

Respondent-Jai Balak Prasad who was subjected to disciplinary proceedings on certain allegations. The Inquiring Officer has held that charges levelled against respondent-Jai Balak Prasad was not proved. The disciplinary authority while



disagreeing with the inquiring officer report proceeded to impose the penalty of reducing 50% of the pension for a period of ten years.

Learned Single Judge in its order 10.08.2017 passed in CWJC No. 6455 of 2011 has held as under:-

*“In view of the above, the act of the disciplinary authority in doing so and imposing the punishment on such consideration cannot be sustained. The disciplinary authority could disagree with the finding of the enquiry officer, notice the petitioner, record his own finding disagreeing with the report and thereafter punish the petitioner, but without doing so it could not be done. The disciplinary authority could at best accept the finding of the enquiry officer which goes to show that the petitioner was careless in discharge of his duties and punish him for the same. Even for doing so, there was no material available on record with the disciplinary authority to show that the petitioner has been habitual in doing so and, therefore, the punishment of withholding of pension and reducing it upto 50% for a period of ten years was not warranted. It is a case where even if the allegations were found to be proved in the departmental enquiry and the finding as recorded by the disciplinary authority is accepted, it would be a case of isolated instance of carelessly and negligently discharging duty which cannot be termed as a ‘misconduct’ in view of the law laid down by the Hon’ble Supreme Court in the case of Union of*



*India & Ors. Vs. J. Ahmed,  
AIR 1979 SC 1022.*

*Keeping in view the aforesaid  
law in the case of J.  
Ahmad (supra), the writ petition is  
allowed. The impugned orders of  
punishment are quashed.”*

As noticed by the learned Single Judge that if the disciplinary authority is disagreeing with the inquiry officer's finding in that event it is necessary to issue show cause notice along with material information as to how inquiry officer report is defective one. In fact, Rule 18 under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 to the extent that in the event of disagreeing with the inquiry officer's report in such circumstances the disciplinary authority is required to remand the matter to the inquiry officer to commence inquiry from the defective stage or he himself can proceed while issuing show cause notice to what extent he is disagreeing with the inquiry officer's report. The aforesaid procedure stipulated under the said Rules, 2005 have not been followed by the disciplinary authority. The appellant-State have not apprised this Court as to how the order of the learned Single Judge is defective.

We find, there is no error committed by the learned Single Judge. Accordingly, order of the learned Single Judge dated



10.08.2017 passed in CWJC No. 6455 of 2011 stands affirmed and  
the present LPA stands dismissed.

**(P. B. Bajanthri, J)**

**(Rajiv Roy, J)**

Vikash/-

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