

**(2003) 07 PAT CK 0014**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 15001 of 2001**

Brajendra Jha

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

**Date of Decision :** 08-07-2003

**Acts Referred:**

State Financial Corporations Act, 1951 — Section 17

**Citation :** (2003) 4 PLJR 157

**Hon'ble Judges :** Chandramauli Kr. Prasad, J

**Bench :** Single Bench

**Advocate :** Manik Vedsen and Subhash Chandra Bose, for the Appellant; P.K. Shahi, for Corporation, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 9.11.2001 (Annexure-21) whereby the Petitioner after a departmental enquiry has been visited with the penalty of compulsory retirement.

2. In view of the order which propose to pass in this writ application, it is inexpedient to give in detail the facts of the case. Suffice it to say that a departmental proceeding was initiated against the Petitioner in which the enquiry officer found him guilty of the misconduct. After receipt of the enquiry report the disciplinary authority gave to the Petitioner the second show cause notice dated 15.10.2001 (Annexure 20) to submit the show cause within two weeks from the date of issue of the said notice as to why he should not be awarded major punishment. The show cause notice cautioned the Petitioner that in case he fails to submit the show cause within two weeks from the date of issuance of the same, it shall be presumed that he has nothing to say in regard to the misconduct and appropriate orders shall be passed. It is the stand of the Petitioner that the aforesaid show cause notice was served on him on 8.11.2001 and before he could submit his reply, the impugned order of compulsory retirement was passed on 9.11.2001. The assertion of the Petitioner that he had

received the second show cause notice on 8.11.2001 has not been denied and further it is an admitted position that the Petitioner had not filed his show cause and the impugned order was passed on 9.11.2001.

3. Mr. Manik Vedsen appearing on behalf of the Petitioner submits that the impugned order has been passed without giving adequate opportunity to the Petitioner, which itself vitiates the impugned order. He also submits that the Managing Director of the Bihar State Financial Corporation who passed the impugned order was appointed as a part time Managing Director hence his appointment itself is void being in the teeth of Section 17 of the State Financial Corporation Act and as such order impugned is fit to be quashed on this ground alone. Mr. R.K. Shahi however appearing on behalf of the Respondents submits that in case the Petitioner had chosen not to file the second show cause, he has to blame himself for that and the order impugned cannot be held to be illegal only on the ground that the Petitioner had not filed the show cause. He submits that even if it is assumed that the appointment of the Managing Director was in the teeth of Section 17 of the State Financial Corporation Act, that itself shall not render the order of punishment illegal.

4. From the pleading of the parties one thing is clear that second show cause notice was received by the Petitioner on 8.11.2001. Further before he could file his reply the impugned order has been passed on 9.11.2001. It is well settled that whenever a delinquent employee is to be given opportunity, same has to be adequate meaning thereby that reasonable time is available to him for submission of the reply. Here in the present case, although the show cause notice gave to the Petitioner two weeks time, same was to be calculated from the date of its issuance. It is not the case of the Respondents that the Petitioner maneuvered to delay the receipt of the notice. Petitioner having received the show cause notice on 8.11.2001, passing of the impugned order on the following day without any reply by him shall plainly amount to passing the order without giving adequate opportunity and thus in the teeth of the principle of natural justice. This being the position, the impugned order dated, 9.11.2001 (Annexure-21) cannot be allowed to stand on this ground alone.

5. As have held the order impugned, to be illegal, for the reason stated above, I, deem it inexpedient to answer the other submission of Mr. Vedsen.

6. Petitioner shall file his reply within four weeks from today and the disciplinary authority, on consideration of the same, shall pass appropriate order in accordance, with law within three months from the date of submission of the reply.

7. In the result, the application is allowed, order dated 9.11.2001 (Annexure-21) is quashed and the Petitioner is directed to be reinstated in service forthwith. However, the arrears of salary for the period Petitioner remained out of employment, on account of order of compulsory retirement, shall abide by the final decision. No costs.