

(2007) 07 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 6178 of 2005

Lakshmi Kant Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Citation : (2007) 4 PLJR 414

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the petitioner and counsel for the respondent-BICICO. Petitioner has filed the present writ application for quashing Memo No. 2896/A dated 10.2.2005 contained in Annexure-20 as well as the order and decision dated 2.2.2005 of the Board of Directors contained in Annexure-21, by virtue of which the petitioner was compulsorily retired. Petitioner submits that he was not given a fair opportunity to defend himself. The proceeding against him was virtually held ex parte. He had made complaints about the Conducting Officer and his bias in the matter from very beginning. He also submits that he was not given a copy of the enquiry report or any second show-cause before the order of compulsory retirement was passed against him based on the so-called enquiry. From the narration made in the writ application with the supporting evidence which is there on the record as well as on perusal of the counter affidavit filed on behalf of the respondents this Court comes to an opinion that some of these contentions which have been raised by this petitioner with regard to the validity of the orders impugned seem to be correct. Prima facie this Court gets an impression that there was a preconceived notion with which the enquiry officer and the disciplinary authority moved in the matter and the orders of punishment of compulsory retirement was culmination of that act.

2. This Court would not like to comment on the merits of the charges which were served on the petitioner as such. When an employee is confronted with certain

charges which he has to answer then the rule of law requires that he be given a fair opportunity to defend himself. Every employer has a right to invoke its powers of discipline under the service rules but every employee has a right under the law to satisfy the authorities that the charges may be misplaced or are not supported with due evidence which forms part and parcel of the charge-sheet. From perusal of Annexure-3 which is the charge-sheet which was served upon the petitioner it is apparent that the same did not contain any evidence oral or documentary on which the enquiry officer was going to rely or will be used against the petitioner. It looks like an open ended enquiry. That is not how a departmental proceeding is conducted. The person accused must know the evidence which is being held out against him so that he gets an opportunity to rebut the same said evidence, either oral or documentary.

3. This Court, therefore, in the given facts and situation is inclined to interfere with the orders of punishment which have been passed against the petitioner contained in Annexures-20 and 21, The same are accordingly quashed. Liberty is granted to the respondents to appoint a fresh enquiry officer if they so desire based on the charges which is contained in Annexure-3. They shall also serve a memo of evidence which they are going to rely in support of the charges and petitioner must be given an opportunity thereafter to defend himself. This Court directs the petitioner to render fullest assistance in the matter who will not seek undue adjournments or be evasive in the action as far as enquiry is concerned. The disciplinary authority will see to it that once the enquiry is completed the petitioner is served with a copy of the enquiry report and a show-cause is issued to him based on the findings if the enquiry in- any manner holds the petitioner guilty of the charges in question. Needless to say that the disciplinary authority shall follow the established procedure in such matters if he comes to an opinion that some order needs to be passed against the petitioner based on the evidence which has emerged. The writ application accordingly stands allowed. Annexures 20 and 21 are quashed with liberty to the respondents as indicated above.