

---

**(2009) 07 PAT CK 0062**  
**In the Patna High Court**  
**Case No : CWJC No. 8624 of 2009**

Shashi Kumar

APPELLANT

Vs

The State of Bihar and The Bihar Industrial Area  
Development Authority

RESPONDENT

---

**Date of Decision :** 31-07-2009

**Acts Referred:**

**Citation :** (2009) 07 PAT CK 0062

---

## Judgement

Navaniti Prasad Singh, J.—The petitioner is an Assistant Executive Officer of the BIADA and is facing departmental proceeding. He has come to this Court against his order of suspension, as passed by the Managing Director of BIADA, as contained in Annexure 10, as also objecting to appointment of Dr. Girish Kumar, Secretary, BIADA, as Enquiry Officer.

2. Learned AAG-3 has appeared on behalf of BIADA and learned Counsel for the State is present.

3. With the consent of the parties, this application is being disposed of at this stage itself.

4. Mr. S.D. Sanjay, learned Counsel in support of the writ petition submits that as per the decision of the Board of Director of the BIADA, dated 2nd July, 2003 (Annexure 7) and in particular Agenda 6 (Any other item), the Board of Director has taken a decision in relation to departmental proceeding and how and who would conduct the same. It was specifically provided that so far as Gazetted Officers are concerned, it was provided that the departmental proceeding would be conducted with the approval of the Board of Director. In ordinary matter, in respect of non gazetted employee, the proceeding could be taken up by the Director but in so far as it relates to removal from service, reduction in rank and censure, which would be taken up by the Managing Director. Based on this, Mr. Sanjay submits that the petitioner being a gazetted employee, the proceeding has been sought to be initiated by the Managing Director is wholly without jurisdiction. The matter has never been considered by the Board of Director. He

could thus be not put under suspension nor proceeded against on this ground. Alternatively, he submits that Dr. Girish Kumar is prejudiced against him. He has already pre judged the matter in all its aspect. Petitioner is not likely to get justice from him and the enquiry to be conducted by him cannot be independent or impartial.

5. On the other hand, learned AAG-3 submits that so far as petitioner is concerned, he is not a gazetted officer. The submissions are that there are Government Officers on deputation to BIADA who may or may not be gazetted officer. It is for protection of these officers, the said decision was taken but surely the petitioner is not a gazetted officer. With regard to Enquiry Officer, he submits that it may be open to the petitioner to raise these objections before the appropriate authority at appropriate stage, as the case may be.

6. Having heard the parties and considered the matter, in my view, it cannot be said that the petitioner is a gazetted officer.

7. Mr. Sanjay has strenuously argued to show the parity of status and of the pay of the petitioner with government employee, who are gazetted.

8. There cannot be dispute with regard to that but merely because the petitioner is in the pay scale, of which pay scale in the government is a gazetted officer not mean that the petitioner becomes a gazetted employee. Even though he has the pay scale and the status equivalent to that of a gazetted employee, he is not a gazetted employee. Gazetted employee is not specifically defined anywhere. In common parlance it is commonly understood as a government employee, whose appointment is gazetted. In practice they are only government employees who can be gazetted. A gazetted employee draws his own salary. He for various purposes is defined separately and distinguished. Surely the petitioner is not a government employee much less his appointment having been gazetted he can not thus be said to be the gazetted employee. In this connection, I may refer to Advanced Law Lexicon, 3rd Edition, 2005, by P. Ramanatha Aiyar:

Gazetted Officer. An officer who holds a gazetted post. [Section 2(17)(c), C.P.C. (5 of 1908)]; [Section 194A(3), Explan., Income Tax Act (43 of 1961)]. Defined. Act 14, 1887, Section 2(1)(b).

The usual incidents so far as the office of the Gazetted Officer is concerned, are that his appointment is always published in the official gazette, he can draw his salary and allowances on bills signed by himself, a record of his services is maintained by the audit office and the powers and privileges of such an officer are given in the Financial Code, Civil Service Regulation and the Service Conduct Rules. *B. Subauna v. S.R. Guru* 12 ELR 201.

The word "Gazetted Officer" has not been defined in any statute or rules. Thus, ordinary meaning is attached to this phrase i.e. the person whose appointment is gazetted is treated as *Karam Singh Vs. Kamal Chaudhary*, .

9. This definition is in consonance with what I have held above. Thus, the

petitioner may having same pay scale as a government gazetted employee yet he cannot be deemed to be a gazetted employee.

10. Secondly, BIADA for the purposes of Article 12 of the Constitution and for the purposes of Part III of the Constitution may be State but it is an autonomous statutory authority and is not State for other part of the Constitution including Articles 309 and 311 etc. Thus, the contention of Mr. Sanjay that the petitioner is a gazetted officer cannot be accepted.

11. Mr. Lalit Kishore, learned AAG-3 rightly points out that BIADA being an autonomous statutory authority at different time they are officers of the State Government deputed to it. It is for the protection of these senior government employees who may be gazetted employee that this special provision has been made. Otherwise in service of BIADA there is no provision nor any concept of gazetted employee. This issue is thus decided against the petitioner.

12. So far as bias or prejudice in relation to Dr. Girish Kumar is concerned, it is pointed out by the petitioner that earlier departmental proceedings were initiated against the petitioner. Dr. Girish Kumar was made, an Enquiry Officer. Without conducting any enquiry and without holding any enquiry he found all charges against the petitioner proved. Those are the same very charges for which petitioner is again being proceeded. At the earlier occasion when all charges were found to be true ex parte by Dr. Girish Kumar, and when the matter was put up before the Managing Director, he disagreed with some findings even though they were ex parte finding. The order of the Managing Director was set aside by this Court. Petitioner thus submits that putting the petitioner back in the same position before the same person, who had already pre judged the issue would be wholly unfair and would prejudice to him. The authority already having taken a decision in the matter to the prejudice of the petitioner cannot be expected to change his views or act impartial in the matter. In my view, these issues should be first raised by the petitioner before the disciplinary authority as also before the enquiry officer. If the disciplinary authority does not change the enquiry officer, it would be open to the disciplinary authority and/or the enquiry officer, as the case may be, to take an appropriate decision in the matter. I may also point out that the proceeding must not only be fair but it should show fairness also. This aspect respondents should keep in mind as also aspect of reasonable apprehension. It is not necessary to prove any bias if a reasonable apprehension of bias can be shown. These are well settled principle of law of Administrative Law which respondents would keep in mind. As this Court is not interfering, at this stage, with the order of suspension, it is directed that subject to petitioner's co-operation, the proceedings should be concluded within a period of three months from today, failing which the order of suspension would stand revoked.

13. With these observations and directions, this writ petition stands disposed of.