
(2010) 04 PAT CK 0104
In the Patna High Court

Vijay Kumar Singh Verma

APPELLANT

Vs

Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0104

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Petitioner and the respondents in the two writ applications are common, in the circumstances, both the applications have been taken up together for hearing in the light of the orders of this Court dated 17.3.1999 passed in C.W.J.C. No. 3139 of 1997.

2. Petitioner at the relevant time served on the post of Assistant Office Superintendent in the Bihar State Financial Corporation (hereinafter referred to as the Corporation). In C.W.J.C. No. 3139 of 1997 he has challenged the office order bearing Memo No. 3525 dated 28.2.1997, Annexure-9, whereunder in the light of the findings recorded by the Enquiry Officer under report dated 20.1.1997, Annexure-7 pursuant to memo of charge dated 1.11.1996, Annexure-1, he has been awarded the punishment of demotion and demoted to the rank of Assistant for failure to comply the transfer order dated 15.2.1996, Annexure-A to the counter affidavit directing him to join the Saharsa Branch Office by 23.2.1996 thereby he remained under unauthorized absence for 164 days with effect from 19.2.1996 till 31.7.1996.

3. In C.W.J.C. No. 11838 of 1997 petitioner has challenged the contents of Letter No. 1231 and 1232 dated 8.8.1997, Annexures 1 and 1/1, whereunder he has been communicated the Annual Confidential Remarks recorded against him by the Managing Director of the Corporation for the year 1994-95 and 1995-96. In the said writ case he has also challenged the memo of charge dated 26.9.1997, Annexure-2, whereunder he is alleged to have displayed gross indiscipline and misconduct against the Managing Director of the Corporation by directly writing letter dated 14.8.1997 to the I.D.C, Government of Bihar, Patna, contents

whereof are derogatory, outrageous and obnoxious exceeding all bounds of decency, reasonableness and propriety amounting to gross indiscipline and misconduct. Under letter dated 14.8.1997 he is also alleged to have made contemptuous remarks against the judiciary. It is further alleged in the charge-sheet that although petitioner is on the post of Assistant in the Corporation, he has described himself as Assistant Office Superintendent which is an act of grave misconduct and disobedience of order contained in Memo No. 3525 dated 28.2.1997 impugned as Annexure-9 in the former writ case.

4. By filing Interlocutory Application No. 4786 of 1998 in C.W.J.C. No. 11838 of 1997 petitioner initially prayed for stay of the office order dated 3.4.1998, Annexure-L by which he was awarded the punishment of compulsory retirement from the service of the Corporation. Later, petitioner filed Interlocutory Application No. 5357 of 1998 in the same writ petition praying inter alia to quash the office order dated 3.4.1998 appended as Annexure-L to Interlocutory Application No. 4786 of 1998 compulsorily retiring him from the service of the Corporation with effect from 3.4.1998.

5. In response to the charge-sheet dated 1.11.1996, Annexure-1 alleging non-compliance of the transfer order dated 15.2.1996, Annexure-A to the counter affidavit and for failure to join the transferred post at Saharsa Branch Office on or before 23.2.1996 in compliance of the instructions relieving him dated 19.2.1996 petitioner submitted his show-cause reply dated 18.11.1996, Annexure-3 stating that he received the transfer order on 16.2.1996 while he was in office and on the date of receipt of the transfer order the condition of his father was serious who had fallen ill on 2.2.1996, petitioner being the only son and person available in the family to look after his ailing father, as his mother pre-deceased his father, under registered letter dated 19.2.1996 applied for grant of ordinary leave from 19.2.1996 till 15.3.1996 after the office of the Corporation opened on 19.2.1996 as 17.2.1996 and 18.2.1996 were holidays. The leave was further extended under letter dated 16.3.1996, 15.4.1996, 1.6.1996, 5.7.1996 and 20.7.1996. In response to Charge No. 1 petitioner specifically stated that he never received the relieving order bearing Memo No. 1169 dated 19.2.1996 either through the special messenger or by registered post. In response to Charge No. 2 petitioner stated that he received the transfer order dated 15.2.1996 when the condition of his father was serious and denied the allegation that he refused to receive the letters through special messenger or registered post. In response to Charge No. 3 that he ignored the notice published in Hindustan, Patna edition on 11.4.1996 petitioner stated that he promptly replied to the notice published in the newspaper vide his letter dated 15.4.1996, copy whereof was also sent to the Managing Director informing him that the condition of his father was serious and he was unable to join duty. In the letter written in response to the notice published in the newspaper petitioner also stated that no letter of the Head Office either under registered cover or through special messenger has been served on him and there was no question of refusing to receive such letter. In response to Charge No. 4 petitioner categorically stated

that he never refused to receive the registered letter dated 9.7.1996, 11.7.1996 and 23.7.1996 and allegation to the contrary is incorrect and unfounded. He further stated in response to the said charge that he never refused to receive any letter sent to him either by registered post or special messenger. On the contrary, he asserted that he always informed the Head Office about his inability to join the transferred place and made request for grant of ordinary leave which remained pending till the filing of the show- cause and the authorities were aware about the ailing condition of his father and inability of the petitioner to leave Patna. In response to Charge No. 5 petitioner stated that he joined the Saharsa Branch Office on 01.08.1996 after the condition of his father stabilized. Earlier he could not join the transferred post on account of the compelling circumstance of his fathers paralytic condition.

6. Having filed the aforesaid show-cause petitioner requested the Enquiry Officer to accept the same and to exonerate him of the charges levelled against him. Having received the show-cause reply of the petitioner dated 18.11.1996, Annexure-3 the Enquiry Officer under letter dated 27.11.1996, Annexure-4 fixed 12.12.1996 as the date for hearing in the proceeding. Petitioner appeared on 12.12.1996 before the Enquiry Officer and reiterated the contents of his show-cause reply dated 18.11.1996, Annexure-3 and further asserted that he had received the transfer order dated 15.2.1996 on 16.2.1996 which can be confirmed from the log book of the Managing Director. He further submitted that he did not ignore the notice published in Hindustan, Patna edition on 11.4.1996 in response where to he had written registered letter with Acknowledgment Due to the Branch Manager on 15.4.1996 explaining the circumstances in which he could not join the Saharsa Branch Office. Copy of the letter dated 15.4.1996 was also sent to the Managing Director through fax and receipt showing dispatch of the letter dated 15.4.1996 to the Branch Manager under registered post and to the Managing Director under fax message was also produced before the Enquiry Officer. Aforesaid fact is found mentioned in the supplementary show-cause filed by the petitioner before the Enquiry Officer on 12.12.1996, Annexure-6 in C.W.J.C. No. 3139 of 1997.

7. The Enquiry Officer having examined the cause shown by the petitioner dated 18.11.1996, Annexure-3 and 12.12.1996, Annexure-6 submitted Enquiry Report dated 20.1.1997 holding the petitioner guilty of all the charges. While holding the petitioner guilty of the charges levelled against him, the Enquiry Officer rejected the plea of illness of the father of the petitioner as unconvincing although petitioner had produced prescription and other documents with ordinary leave application(s) to establish the fact that his father was critically ill and required the assistance of the petitioner.

The Enquiry Officer also found the petitioner guilty of not receiving letters sent to him either under registered post or through special messenger but in this connection, the Enquiry Officer neither referred to any registration receipt showing dispatch of any letter to the petitioner nor examined the special

messenger who had gone to the petitioner for serving any letter which the petitioner refused to receive. The Enquiry Officer also did not refer to any service-report of the special messenger. Learned Counsel for the petitioner with reference to the aforesaid laches on the part of the Presenting Officer to produce registration/service report, examine the special messenger submitted that the findings recorded in regard to Charge No. 2 is without any material and should be ignored. The Enquiry Officer also found the petitioner guilty of ignoring the notice published in Hindustan, Patna edition on 11.4.1996 directing him to join the transferred post by 20.4.1996 although in response thereto petitioner had submitted his application dated 15.4.1996 to the Branch Manager under registered post copy whereof was also sent to the Managing Director of the Corporation through fax informing him that his father continued to be serious and he is unable to join the transferred post by 20.4.1996 but contents of the letter dated 15.4.1996 was ignored and his application for leave for the period between 19.2.1996 to 15.3.1996 was rejected under letter dated 4.3.1996 referred to in the notice published in Hindustan, Patna edition dated 11.4.1996 which is said to have been sent to the petitioner under registered post but the registration receipt showing dispatch of letter dated 4.3.1996 to the petitioner under registered cover was never produced before the Enquiry Officer nor any material was produced to suggest that the father of the petitioner was not critically ill, as such, learned Counsel for the petitioner submitted that the finding that petitioner ignored the notice published in Hindustan, Patna edition on 11.4.1996 is not correct as in response thereto he had dispatched letter dated 15.4.1996 under registered cover to the Branch Manager with copy to the Managing Director of the Corporation through fax informing them about the illness of his father and his inability to join the transferred post by 20.4.1996 and the receipt showing dispatch under registered cover and fax was also produced before the Enquiry Officer which is evident from the supplementary show-cause reply dated 12.12.1996, Annexure-6, as such, the finding that petitioner ignored the contents of the notice published in the newspaper to join the transferred post at Saharsa by 20.4.1996 is not correct as the father of the petitioner remained critically ill during that period. Learned Counsel for the petitioner assailed the finding of the Enquiry Officer, as regards Charge No. 4 that letter dated 09.07.1996, 11.7.1996 and 23.7.1996 were served on the petitioner through registered cover is wholly incorrect as while recording such finding the Enquiry Officer only perused the letter which indicated that those letters were sent to the addressee through registered post but no registration receipt was produced in support of the fact that letters were actually dispatched through registered post and for failure of the Presenting Officer to produce the receipt showing dispatch of the letters through registered post there cannot be any conclusive proof that the letters were actually dispatched through registered post. Learned Counsel for the petitioner also refuted the findings of the Enquiry Officer that petitioner joined the transferred post as per his sweet will on 01.08.1996 as during the period between 19.2.1996 till 31.7.1996 the father of the petitioner was critically ill and there was none in the family to look after him petitioner kept on

requesting the authorities to grant and extend his ordinary leave from time to time. No sooner the condition of his father stabilized, he joined the transferred post on 01.08.1996. In view of the fact that the authorities never questioned the veracity and correctness of the medical prescription and other materials produced by the petitioner from time to time with his ordinary leave application(s) that his father remained critically ill during the period between 19.2.1996 till 31.7.1996, the authorities are estopped from questioning the veracity and correctness of those material after the condition of his father has stabilized. Learned Counsel for the petitioner further submitted that in case the authorities doubted the plea of illness of the father of the petitioner it was open for them to have asked the petitioner to get his father examined by any doctor of the choice of the authorities but without any medical evidence suggesting to the contrary the plea of illness raised by the petitioner on the basis of the medical prescription issued by the doctor attending on his father could not have been rejected.

8. The finding of the Enquiry Officer was forwarded by the Managing Director of the Corporation to the petitioner under letter dated 21.1.1997, Annexure-7 asking the petitioner to furnish his comment/reaction on the points emerging in the Enquiry Report latest by 5.2.1997. In response to the instructions contained in letter dated 21.1.1997, Annexure-7. Petitioner submitted his comment/reaction under letter dated 30.1.1997, Annexure-8, once again reiterating the fact that his father is 75 years old, after the demise of his mother has become lonely, sick, infirm and completely dependent on the petitioner, his only son for his treatment and nursing. Petitioner further submitted that his father suffered paralytic stroke on 2.2.1996 and since then he is being looked after by the petitioner by sparing time from the office, meanwhile, petitioner was transferred under order dated 15.2.1996 calling upon him to join Saharsa Branch Office by 23.2.1996. The transfer order was received by him on 16.2.1996. The condition of the father of the petitioner was such that it was impossible for the petitioner to join the transferred post at Saharsa by 23.2.1996. Accordingly, after reopening of the office on 19.2.1996 petitioner had no option but to apply for grant of ordinary leave for the period between 19.2.1996 till 15.3.1996 and he had no intention to violate the transfer order dated 15.2.1996 rather he was compelled by the circumstances to apply for grant of ordinary leave. The finding of the Enquiry Officer that petitioner deliberately disobeyed the transfer order is not correct. It was also stated that petitioner never refused to accept any letter sent to him either through registered post or through special messenger and finding to the contrary recorded by the Enquiry Officer is misplaced as neither the receipt showing dispatch of the letter through registered post was produced before him nor any special messenger who was entrusted to serve the letter on the petitioner was ever examined in the proceeding. He also contended that he never ignored the notice published in the newspaper on 11.4.1996 calling upon him to join the transferred post by 20.4.1996 as in response to the said notice he again informed the Branch Manager through registered post and the Managing

Director under fax message that his father continues to be critically ill and it may not be possible for the petitioner to leave his father alone and join the transferred post at Saharsa. The Managing Director considered the comment dated 30th January, 1997, Annexure-8 received from the petitioner and passed office order bearing Memo No. 3525 dated 28.2.1997, Annexure-9 demoting the petitioner from the post of Assistant Office Superintendent to the rank of Assistant.

9. Petitioner challenged the aforesaid order dated 8.2.1997, Annexure-9 by filing C.W.J.C. No. 3139 of 1997 on the ground that while rejecting the plea of illness of the father of the petitioner both the Enquiry Officer and the Managing Director have proceeded on the basis of conjecture and surmises without there being any material to disprove the contention of the petitioner that his father was critically ill during the period between 19.2.1996 till 31.7.1996 and required the assistance of the petitioner for nursing as it was only the petitioner available in the family to attend on him after he suffered the paralytic stroke on 2.2.1996. Meanwhile, petitioner was transferred to Saharsa Branch Office under order dated 15.2.1996 and he had no option but to apply for ordinary leave. Without there being any material to suggest that petitioner had raised false plea of his fathers illness, his request for grant of ordinary leave was rejected under letter dated 4.3.1996, copy whereof was never served on the petitioner and this fact was brought to the notice of the authorities under letter dated 15.4.1996 submitted in response to the notice published in Hindustan, Patna edition on 11.4.1996 copy whereof was not only sent to the Branch Manager under registered post but also to the Managing Director through fax and receipt showing dispatch under registered cover/fax was produced before the Enquiry Officer as is evident from the supplementary show-cause dated 12.12.1996, Annexure-6 and the finding to the contrary recorded by the Enquiry Officer that petitioner continued to ignore the instruction of the authorities to join the transferred post is wholly devoid of merit as those instructions were issued by the authorities without appreciating the fact that his father was critically ill and in such circumstances, it was not only difficult but impossible for the only son to have joined the transferred post leaving his father all alone.

10. Learned Counsel for the petitioner further submitted that aforesaid aspect of the matter although raised in the comment furnished by the petitioner in response to the findings recorded by the Enquiry Officer under comment dated 30.1.1997, Annexure-8 were not even referred to by the Managing Director under the impugned order, as such, the impugned order suffers from the vice of arbitrariness as the same has not considered the factum of illness of the father of the petitioner, although prescriptions attached with the ordinary leave application were submitted to the Branch Manager and the Managing Director and averment to that effect has been made in the comment dated 30th January, 1997 submitted by the petitioner to the Managing Director, Annexure-8, which was so vital and necessary for being considered while considering the comment of the petitioner before passing the impugned order demoting the petitioner.

11. Learned Counsel for the petitioner assailed the office order dated 3.4.1998, Annexure-L to Interlocutory Application No. 4786 of 1998 in C.W.J.C. No. 11838 of 1997 on the ground that the same proceeded on the basis of the ex parte Enquiry Report dated 28.01.1998, Annexure-D although petitioner had requested the Enquiry Officer under letter dated 15.1.1998 to furnish the gravamen of the charge levelled against him that he displayed gross indiscipline and misconduct by writing letter dated 14.8.1997 to the I.D.C., Government of Bihar, Patna, contents whereof were derogatory, outrageous and obnoxious by serving a copy of the letter dated 14.8.1997 on the petitioner but the Enquiry Officer without ensuring service of the copy of the said letter, as is evident from internal Page-5 of the Enquiry Report itself, proceeded to conduct the enquiry and hold him guilty of writing letter dated 14.8.1997 without serving a copy of the letter dated 14.8.1997 on the petitioner so as to enable him to deny the contents of the letter. In this connection, learned Counsel for the petitioner further submitted that after receipt of the memo of charge dated 26.9.1997, Annexure-2 petitioner challenged the same by filing Interlocutory Application No. 7153 of 1997 in the earlier writ petition, C.W.J.C. No. 3139 of 1997 which was permitted to be withdrawn under order dated 5.12.1997 passed in C.W.J.C. No. 3139 of 1997 with liberty to challenge the charge-sheet dated 26.09.1997, Annexure- 2 by filing a fresh writ petition. As 6.12.1997 was the date fixed in the proceeding, counsel for the petitioner submitted before the Hon"ble Court that the Conducting Officer is not likely to grant him time to file his written defence in the proceeding, whereafter the Court verbally directed the counsel for the Corporation Sri P.K.Shahi that in the event adjournment being sought by the petitioner in the proceeding, the same should be allowed. In the light of the observations of the Hon"ble Court petitioner through his lawyer Sri Mithilesh Kumar Pathak requested the Enquiry Officer under letter dated 6.12.1997, Annexure-4 to grant six weeks time so as to enable him to participate in the Enquiry Proceeding and fix mutually convenient date for inspection of the records but the request for adjournment and perusal of the documents relied in support of the charge contained in letter dated 6.12.1997, Annexure-4 was rejected by the Enquiry Officer and 22.12.1997 was fixed as date for hearing in the proceeding by way of last chance with direction to the petitioner to file his written show cause by that date. On 20.12.1997 petitioner filed the subsequent writ case C.W.J.C. No. 11838 of 1997 praying inter alia to direct the respondent to drop the departmental proceeding initiated in the light of charge-sheet dated 26.9.1997, Annexure-2 and having filed the second writ case petitioner under his letter dated 22.12.1997, Annexure-8 to Interlocutory Application No. 78 of 1998 again reiterated the contents of his earlier letter dated 6.12.1997, Annexure-4, whereunder request was made for adjournment of the proceeding in the light of the verbal observations of the Hon"ble Court made in presence of the retained lawyer of the Corporation Sri P.K.Shahi but the prayer to adjourn the proceeding was rejected and such rejection of the prayer to adjourn the proceeding, according to the petitioner was contempt and willful disobedience of the observations of the Hon"ble Court. In the light of the verbal observations of the

Hon"ble Court petitioner once again through his lawyer under letter dated 22.12.1997, Annexure-8 to Interlocutory Application No. 78 of 1998 requested the Enquiry Officer to adjourn the proceeding by four weeks. From internal page-3 of the Enquiry Report dated 28.1.1998, Annexure-D it appears that the request of the petitioner to adjourn the proceeding by four weeks contained in letter dated 22.12.1997, Annexure-8 to Interlocutory Application No. 78 of 1998 was referred to the retained lawyer of the Corporation Sri P.K.Shahi for opinion and Sri Shahi, according to the Enquiry Officer, opined that as long there is no specific order of the High Court restraining the enquiry against the petitioner, same should continue. Petitioner prayed for adjournment of the enquiry proceeding in the light of the verbal observations of the Hon"ble Court made during the hearing of Interlocutory Application No. 7153 of 1997 on 5.12.1997 and according to learned Counsel for the petitioner the Enquiry Officer should have confirmed from the retained lawyer of the Corporation whether the High Court made any verbal observations to grant adjournment in the proceeding. From the Enquiry Report dated 28.1.1998, Annexure-D it does not appear that any such query was made from Sri P.K.Shahi yet the prayer of the petitioner to adjourn the proceeding was rejected on the ground that there was no specific order of the High Court to grant adjournment. Under order bearing Memo No. 2556 dated 7.1.1998 the Enquiry Officer fixed 19.1.1998 as the date for ex parte proceeding. This Court considered the request of the petitioner made in Interlocutory Application No. 78 of 1998 to stay the enquiry proceeding under order dated 13.1.1998 but rejected the same directing the Corporation to file counter affidavit by 19th February, 1998 with further direction that the writ case be listed for admission thereafter. Under letter dated 15.1.1998 petitioner informed the Enquiry Officer that he has filed writ petition questioning the validity of the memo of charge dated 26.09.1997, Annexure-2 and the matter is likely to be taken up in the second week of February, 1998, the matter being subjudice and the document (letter dated 14.08.1997) relied in support of the memo of charge dated 26.09.1997, Annexure-2 having not been served on the petitioner, as is evident from the memo of charge itself, the proceeding should be stayed. From internal Page-5 of the Enquiry Report dated 28.01.1998, Annexure-D it further appears that the request of the petitioner to furnish the copy of the documents relied in support of the memo of charge was rejected by the Enquiry Officer. The Enquiry Officer thereafter submitted ex parte Enquiry Report dated 28.01.1998, Annexure-D which was served on the petitioner by the Managing Director under letter dated 29.1.1998, Annexure-D asking the petitioner to submit his reaction/comment on the points emerging out of the ex parte Enquiry Report dated 28.01.1998 by 10.2.1998. Petitioner having received the letter dated 29.1.1998 on 6.2.1998 requested his lawyer Sri Mithilesh Kumar Pathak to appear before the Managing Director on 10.2.1998 and seek further time so as to enable him to submit his comment over the ex parte Enquiry Report dated 28.1.1998. Sri Mithilesh Kumar Pathak in compliance of the request of the petitioner went to appear before the Managing Director on 10.2.1998 in his chamber for seeking further time to enable the petitioner to file his comment but

the Managing Director was not available in his chamber and, accordingly, petitioner was informed about the unavailability of the Managing Director for obtaining further extension of time to submit comment whereafter petitioner under registered letter dated 10.2.1998, Annexure-E sought four weeks time for preparing his comment and reaction over the ex parte Enquiry Report dated 28.1.1998, Annexure-D. The Managing Director, however, under letter dated 21.2.1998, Annexure-F extended the time for submitting comment by 3.3.1998 which was further extended by the Managing Director under letter dated 2.3.1998, Annexure-H until 9.3.1998. Petitioner under letter dated 3.3.1998, Annexure-G requested the Managing Director to change the Enquiry Officer who had proceeded to hold him guilty of the charges levelled against him without even furnishing the copy of the letter dated 14.08.1997 and set aside the findings in the Enquiry Report so that petitioner could comment on the authenticity of the letter and its contents before the newly appointed Enquiry Officer. In response to the request of the petitioner to furnish the copy of the letter dated 14.08.1997 as per the request made in letter dated 3.3.1998, Annexure-G petitioner was given copy of the letter dated 14.08.1997 under letter of the Managing Director dated 09.03.1998 but the Enquiry Officer was not changed whereafter petitioner under letter dated 21.3.1998, Annexure-J informed the Managing Director that he has received the letter dated 09.03.1998 containing the required document (letter dated 14.8.1997) on 17.3.1998 directing him to furnish the show-cause by 20.03.1998 and, accordingly, he came to Patna from Saharsa on 20.03.1998 to consult his lawyer but thereafter learnt that the lawyer has gone to Delhi and is expected to return by 23.03.1998 and, in the circumstances, he prayed for three weeks time to file his comment. The prayer to grant three weeks further time to file the comment was rejected by the Managing Director under letter dated 23.03.1998 directing the petitioner to file his comment by 31.3.1998. In response to such direction petitioner came to Patna from Saharsa and under letter dated 31.3.1998, Annexure-K informed the Managing Director that as his prayer to set aside the ex parte Enquiry Report dated 28.1.1998, Annexure-D has already been rejected by the Managing Director, he shall challenge the order of the Managing Director before the Board of Directors. The Managing Director having considered the memo of charge dated 26.09.1997, Annexure-2, contents of the letter dated 14.08.1997 alleged to have been written by the petitioner, Enquiry Report dated 28.01.1998, Annexure-D and the comments of the petitioner dated 31.3.1998, Annexure- K concluded that the charges levelled against the petitioner are proved with reference to the contents of the letter dated 14.8.1997.

12. Learned Counsel for the petitioner with reference to the memo of charge dated 26.09.1997, Annexure-2 and the Enquiry Report dated 28.01.1998, Annexure-D submitted that the basis of the charge levelled against the petitioner that he displayed gross indiscipline and misconduct by directly writing letter dated 14.08.1997 to the I.D.C., Government of Bihar, Patna making derogatory, outrageous and obnoxious remarks against the Managing Director of the

Corporation does not appear to have been proved against the petitioner as inspite of repeated request made by the petitioner to the Enquiry Officer to make the letter dated 14.8.1997 available for inspection and to furnish a copy thereof so as to enable the petitioner to challenge its authenticity the same was not produced and such request was rejected by the Enquiry Officer, as is evident from internal Page 3 and 5 of the Enquiry Report dated 28.1.1998, Annexure-D, as such, the ex parte Enquiry report could not have been relied upon to punish the petitioner under the impugned order.

13. In this connection learned Counsel for the petitioner specifically invited my attention towards the contents of the letter of the lawyer of the petitioner dated 6.12.1997, Annexure-4, whereunder request was made to fix a mutually convenient date for inspection of the documents which is relied upon by the Corporation in support of the charge and also towards the contents of the letter of the petitioner dated 15.1.1998, Annexure-C referred to at internal Page-5 of the Enquiry Report dated 28.1.1998, Annexure-D, whereunder request was made to supply the papers/documents on which the Corporation placed reliance in support of the charge.

14. Learned Counsel for the petitioner submitted that the documents relied in support of the charge were neither produced nor copy furnished to the petitioner, as such, could not have been relied upon in the Enquiry Report and as the Enquiry Officer has relied over the same and has held the petitioner guilty of the charge, the Enquiry Report is fit to be set aside. In this connection, learned Counsel for the petitioner further relied on the contents of the letter of the petitioner dated 3.3.1998 addressed to the Managing Director, contained in Annexure-G, whereunder request was made to furnish the copy of the letter dated 14.8.1997 and to set aside the Enquiry Report dated 28.1.1998, Annexure-D and entrust the enquiry to some other officer so as to enable the petitioner to challenge the authenticity of the letter dated 14.08.1997.

15. Learned Counsel for the petitioner with reference to the judgment of the Hon"ble Supreme Court in the case of Rama Kant Misra Vs. The State of Uttar Pradesh and Others, submitted that in the instant case the misconduct alleged has not been proved as the Corporation inspite of repeated demand by the petitioner did not furnish the petitioner copy of the letter dated 14.8.1997 so as to enable him to challenge the authenticity/authorship of the document before the Enquiry Officer. He, however, submitted that even assuming that petitioner was the author of the letter, the punishment of compulsory retirement is disproportionate to the misconduct alleged as petitioner is not said to have caused any financial loss to the Corporation, he ought not to have been compulsorily retired from the service of the Corporation when he had about five years to reach the age of superannuation.

16. Having heard counsel for the petitioner and having perused the charge-sheet dated, 1.11.1996, Annexure-1, the Enquiry Report dated 20.1.1997, Annexure-7, punishment order dated 28.02.1997, Annexure-9 in C.W.J.C. No. 3139 of 1997,

it appears that the Enquiry Officer while recording the findings in the Enquiry Report dated 20.1.1997 and the Managing Director while passing the impugned punishment order of demotion dated 28.2.1997, Annexure-9 rejected the contents of the ordinary leave application dated 19.2.1996, 16.3.1996, 15.4.1996, 1.6.1996, 5.7.1996 and 20.7.1996 along with the supporting medical prescription and other documents on the basis of which petitioner submitted before the Branch Manager and the Managing Director that his father, a widower, was critically ill during the period between 19.2.1996 to 31.7.1996 required his assistance as petitioner being the only son there was no other adult male in the family to look after him, stating that petitioner submitted the ordinary leave applications referred to above and the medical prescriptions through registered post contrary to the prevailing practice of submitting the ordinary leave application personally although he was residing and available at Patna. The ordinary leave application and the prescriptions of the father of the petitioner should have been considered by the authorities for grant of ordinary leave. The Enquiry Officer also should have taken note of the ordinary leave application, the prescriptions and the registration receipts showing dispatch of the ordinary leave application to the Branch Manager and the Managing Director of the Corporation. In view of the fact that the Presenting Officer has not produced any material to show that the condition of the father of the petitioner was not critical during the period between 19.2.1996 till 31.07.1996 it could not be presumed by the authorities that the plea of fathers illness raised by the petitioner is incorrect. In case the authorities doubted the plea of fathers illness raised by the petitioner it was open for them to have asked the petitioner to get his father examined by any doctor of the choice of the authorities but without any medical evidence suggesting to the contrary the plea of illness raised by the petitioner on the basis of the medical prescription produced by the doctor attending on his father could not have been rejected and findings to the contrary recorded in the Enquiry Report dated 20.1.1997, Annexure-7 is fit to be set aside. The finding in the Enquiry Report as regards Charge No. 2 that petitioner refused to receive the letter through registered post and the special messenger to join his duty at Saharsa Branch Office by 23.2.1996 is also fit to be rejected as from perusal of the entire Enquiry Report it does not appear that any registration receipt was produced before the Enquiry Officer to establish the charge that the letter was actually dispatched through registered post so as to raise presumption of service of the letter. By merely producing the letter indicating registered post does not establish that the letter was actually dispatched under registered cover. Without furnishing the registration receipt, presumption in law u/s 27 of the General Clauses Act about service of the letter cannot be raised. Charge No. 3 that petitioner ignored the notice published in Hindustan, Patna edition dated 11.4.1996 also does not appear to have been proved as in response to the said notice petitioner wrote letter dated 15.4.1996 to the Branch Manager copy whereof was also sent to the Managing Director through fax stating that the condition of his father had become serious and he was unable to join duty. Petitioner also stated therein that no letter of Headquarter under registered cover

or through special messenger was ever served on him. He also reiterated that the allegation that he refused to receive the registered letter as also the letter served through special messenger is incorrect. He further clarified that letter of the Deputy Manager dated 4.3.1996 rejecting his request for grant of leave for 26 days between 19.2.1996 to 15.3.1996 referred to in the press publication dated 11.4.1996 was never served on him and no registration receipt showing dispatch of letter dated 4.3.1996 under registered cover was ever produced before the Enquiry Officer so as to raise the presumption of service of letter dated 4.3.1996 on the petitioner. Charge No. 4 that petitioner refused to receive registered letter dated 9.7.1996, 11.7.1996 and 23.7.1996 also does not appear to have been proved as no receipt showing dispatch of those letters through registered post was ever produced before the Enquiry Officer, in the circumstances, the Enquiry Officer could not have raised presumption that the letters were actually dispatched under registered cover and served on the petitioner. Charge No. 5 that petitioner joined the Saharsa Branch Office at his sweet will on 1.8.1996 is also not proved as petitioner through medical prescription of his father could establish that he was prevented from joining the transferred post on account of the serious illness of his father and he had informed all concerned about such illness from time to time and requested them to accommodate him so as to enable him to tide over the ill health of his father. The Enquiry Officer and the Managing Director having failed to consider the aforesaid aspect of the matter in the Enquiry Report dated 20.1.1997, Annexure-7 and the impugned demotion order dated 28.2.1997, Annexure-9 in the circumstances, there is no difficulty for this Court to hold that both the Enquiry Report dated 20.1.1997, Annexure-7 and the impugned demotion order dated 28.2.1997, Annexure-9 suffers from the vice of arbitrariness as the Enquiry Officer and the Managing Director having not considered the relevant materials, the Enquiry Report and the Demotion order is fit to be set aside which is, accordingly, set aside.

17. From perusal of the charge-sheet dated 26.09.1997, Annexure-2, Enquiry Report dated 28.1.1998, Annexure-D and the impugned order of compulsory retirement dated 3.4.1998, Annexure-L it is evident that the ex party Enquiry Report dated 28.01.1998, Annexure-D was submitted without granting adequate opportunity to the petitioner to file his show cause in the light of the verbal observation of this Court made on 5.12.1997 during the hearing of Interlocutory Application No. 7153 of 1997 to grant adequate opportunity although the retained lawyer of the Corporation Sri P.K.Shahi never disputed such fact when opinion was sought by the Enquiry Officer from him in connection with the request made on behalf of the petitioner by his lawyer Sri Mithilesh Kumar Pathak under letter dated 6.12.1997 and 22.12.1997, as is evident from internal page 3 and 4 of the Enquiry Report dated 28.1.1998, Annexure-D. It is further evident that the Enquiry Report dated 28.1.1998 was submitted without making available the letter dated 14.8.1997 which is the basis of the memo of charge either for inspection or by serving a copy thereof to the petitioner so as to enable

him to challenge the authenticity of the contents of the letter dated 14.8.1997 although petitioner had specifically asked the Enquiry officer under letter dated 15.1.1998 to supply the copy of the document which is relied upon by the Corporation in support of the contents of the memo of charge. The letter of the petitioner dated 15.1.1998 is referred to at internal page 5 of the Enquiry Report dated 28.1.1998. Petitioner having received the ex parte Enquiry Report from the Managing Director under letter dated 29.1.1998 informed the Managing Director under letter dated 3.3.1998, Annexure-G that the ex parte Enquiry Report could not be relied upon as the same has been submitted without giving him the opportunity to either inspect and peruse the basis of the memo of charge i.e. letter dated 14.8.1997 or by serving a copy thereof on him, as such, the Enquiry Report cannot be acted upon unless he is given an opportunity to challenge the authenticity of the letter dated 14.08.1997 and its contents. He further requested the Managing Director under letter dated 3.3.1998 to set aside the Enquiry Report and after serving copy of the letter dated 14.8.1997 to appoint another Enquiry Officer so as to enable him to challenge the authenticity of the letter dated 14.8.1997. In response to the request of the petitioner contained in letter dated 3.3.1998, the copy of the letter dated 14.8.1997 was given to the petitioner under letter dated 9.3.1998 but the Enquiry Report having not been set aside by the Managing Director petitioner had no opportunity to challenge the authenticity of the letter dated 14.8.1997. The order of punishment dated 3.4.1998 having been passed on the basis of the ex parte Enquiry Report as also the contents of letter dated 14.8.1997 cannot be sustained as petitioner was not given any opportunity to challenge the contents of the letter dated 14.8.1997 although he specifically asked the Enquiry Officer to furnish the same under letter dated 15.1.1998 referred to in the Enquiry Report itself. The service of the letter dated 14.8.1997 under letter of the Managing Director dated 9.3.1998 was also of no assistance to the petitioner as having received the same on 17.03.1998, as would appear from Annexure-14, he had no opportunity to challenge the contents of the letter dated 14.8.1997 as finding of the Enquiry Officer under report dated 28.1.1998, Annexure-D stood already recorded against him. It is, thus, evident that the impugned punishment order suffers from the vice of arbitrariness as it proceeds on the basis of the ex parte Enquiry Report and the contents of letter dated 14.8.1997 which the petitioner during the enquiry had no opportunity to challenge as copy thereof was neither made available for inspection nor served on the petitioner inspite of his repeated demand from the Enquiry Officer for inspection and service of the copy of the letter dated 14.8.1997. Even after the copy of the letter dated 14.8.1997 was served on him under letter of the Managing Director dated 9.3.1998 petitioner had no opportunity to challenge the contents of the letter as finding against him about the authorship of the letter dated 14.08.1997 stood recorded against him by the Enquiry Officer under his report dated 28.01.1998, Annexure-D. It is, thus, obvious that petitioner was confronted with a situation which was fait accompli and had no opportunity to prove his innocence. In view of my finding above, the punishment order dated 03.04.1998, Annexure-L is set aside.

18. Under order dated 13.1.1998 passed in C.W.J.C. No. 11838 of 1997 this Court directed the counsel appearing for the Corporation to file the counter affidavit by 19th February, 1998 and thereafter the application be placed for admission. The counter affidavit was not filed by 19th February, 1998 although ex parte Enquiry Report dated 28.1.1998 stood submitted against the petitioner. Later, petitioner was compulsorily retired under the impugned order dated 03.04.1998, Annexure-L. From the order dated 1.12.1998 it appears that the Corporation was allowed last indulgence to file counter affidavit by 15th December, 1998 which was filed on 15.12.1998 whereafter the writ application was admitted for hearing under orders dated 17.3.1999 and remained pending all these years, meanwhile, petitioner attained the age of superannuation in the year 2003. In the circumstances, petitioner cannot be allowed reinstatement in the service of the Corporation but considering the fact that he is the victim of the wrath of the then Managing Director and is not alleged to have caused any financial loss to the Corporation, he is directed to be paid arrears of salary for the period 3.4.1998 till the date he attained the age of superannuation in 2003. He is also entitled for the arrears of salary for the earlier period during which he could not join the Saharsa Branch Office on account of illness of his father and had applied for ordinary leave after allowing the said period as ordinary leave to him as per the provisions contained in Chapter IV Rule 72 and 73 of the Bihar State Financial Corporation Staff Regulation, 1965.