

(2010) 08 PAT CK 0178

Patna High Court

Case No: CWJC No. 9392 of 1996

Manik Vedsen

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 24, 2010

Acts Referred:

- State Financial Corporations Act, 1951 - Section 23

Citation: (2011) 2 PLJR 484

Hon'ble Judges: V.N. Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

V.N. Sinha, J.

Petitioner at the relevant time served as Assistant General Manager, Disbursement in the Bihar State Financial Corporation (hereinafter referred to as the "Corporation"). Initially this writ petition was filed questioning the validity of the notification of the State Government dated 17.6.1996, Annexure-4, where under Respondent No. 6 was appointed as Officer-on-Special Duty in the Corporation. In the writ petition further challenge is made to the office order bearing Memo No. 120 dated 18.7.1996, Annexure-5 passed by the Managing Director of the Corporation appointing Respondent No. 6 as the Enquiry Officer and Sri. P.K. Jha, Deputy Manager as the Presenting Officer with direction to conclude the departmental proceeding initiated against the Petitioner vide charge-sheet dated 2.4.1993.

2. It is submitted in the writ petition that the State Government had no power to appoint Respondent No. 6 as Officer-on-Special Duty in the Corporation and the Managing Director was not competent to direct continuation of the departmental proceeding against the Petitioner as under orders dated 23.3.1994 passed in C.W.J.C. No. 4203 of 1993, Annexure-1 the Division Bench of the High Court was pleased to direct that the Board of Directors in the case of the Petitioner may

exercise the power of the disciplinary authority and pass appropriate order in accordance with law as Petitioner alleged mala fide against the Managing Director. According to the Petitioner the decision to continue the disciplinary proceeding against the Petitioner in the light of the orders of the High Court dated 8th February, 1996 passed in C.W.J.C. No. 3861 of 1994, Annexure-2 ought to have been taken by the Board of Directors and not by the Managing Director. Aforesaid contention was raised by the Petitioner before the Managing Director under his representation dated 29.8.1996, Annexure-6 but the same was rejected by the Managing Director under orders dated 30.8.1996, Annexure-7. During the pendency of the instant writ petition the proceeding initiated under office order dated 18.7.1996, Annexure-5 was not stayed and Petitioner participated in the proceeding after rejection of his objection to continue the proceeding under orders dated 30.8.1996, Annexure-7 pursuant to notice dated 21.9.1996, 18.10.1996, 2.11.1996, Annexures-8, 9 and 10 and requested the Enquiry Officer, Respondent No. 6 under letter dated 9.12.1996, Annexure-14 to furnish him the relevant files and other documents detailed in the letter so as to enable him to rely on the documents called for under letter dated 9.12.1996, Annexure-14 in support of his plea raised in the written statement already filed on 9th June, 1994 in compliance of the orders of the High Court in L.P.A. No. 434 of 1996 as also to supplement the contents of his written statement. The documents asked for have been detailed in paragraph-1 of the letter dated 9.12.1996, Annexure-14 and in para-graphs-4 and 5 of the letter dated 9.12.1996, Annexure-14 request has been made that the documents asked for are required by the Petitioner for supplementing the written statement disputing the contents of the report of the Sub-Committee of the Board of Directors and findings contained in the Enquiry Report of Sri P.K. Sinha, Ex-O.S.D. of the Corporation relied in support of the charges. In paragraphs of the said letter dated 9.12.1996, Annexure-14 request was made to ensure presence of the witnesses, namely, the officers including the three earlier Managing Director (s) who served the Corporation at the relevant time as their presence in the enquiry is required for establishing the defence of the Petitioner that the recommendation made by the Petitioner for release of the amount in favour of M/s Biscay Data Products Pvt. Ltd. was not contrary to the prevailing norms of release as release was recommended following the disbursement norms of the Corporation in case of joint financing following the decision of the lead institution, BICICO, as was done in the case of M/s Bihar Gases, Jasidih and M/s Arnil Electronics, Patna without receipt of the report from the Branch.

3. In paragraph-7 of the letter dated 9.12.1996, Annexure-14 request was made to pass orders for payment of the arrears of salary for the period 2.4.1993 to 23.3.1994 and 28.6.1994 till 19.3.1996 in compliance of the orders of the High Court in L.P.A. No. 434 of 1996 as the payment was required by the Petitioner for meeting his livelihood and legal expenses. List of witnesses appended with the letter dated 9.12.1996, Annexure-14 indicate that Petitioner desired to examine three past

Managing Directors of the Corporation who could throw light on the defence of the Petitioner as also testify that the charges levelled against him were misconceived. The Enquiry Officer did not comply with the request of the Petitioner to furnish him the copy of the documents called for under letter dated 9.12.1996, Annexure-14 and published notice dated 3.1.1997, Annexure-15 in the newspaper indicating that Petitioner is not participating in the enquiry proceeding and if he fails to appear in the proceeding on 8.1.1997, the next date fixed in the enquiry, the enquiry shall proceed ex parte. Petitioner being aggrieved by the conduct of the Enquiry Officer filed representation dated 6.1.1997 raising six grounds in support of his prayer to change the Enquiry Officer as according to the Petitioner appointment of Sri R.P. Singh as Officer-on-Special Duty in the Corporation was in teeth of Section 23 of the State Financial Corporation Act, 1951 and that Sri R.P. Singh had no jurisdiction to direct him to join the Shahabad Branch of the Corporation vide his letter dated 21.8.1996 and that he was damaging the reputation of the Petitioner by publishing notice in the local newspaper although Petitioner always responded to the notice served on him through Special Messenger on 12.12.1996 and 18.12.1996 including the notice dated 3.1.1997. Further on the ground that Sri R.P. Singh refused to order the Management of the Corporation to supply the copies of the documents which were necessary for the Petitioner to establish his defence. Also on the ground that Sri R.P. Singh by his repeated letters disclosed his mind and preference to hold ex parte enquiry against the Petitioner. Further on the ground that Sri R.P. Singh has intentionally not taken any action to ensure payment of the arrears of salary/subsistence allowance due to the Petitioner as also ignored the orders of the High Court passed in L.P.A. No. 434 of 1996 for payment of arrears of salary to the Petitioner thereby depriving the Petitioner the adequate opportunity to defend himself. The Managing Director of the Corporation under letter dated 6.1.1997 was also requested by the Petitioner to ensure payment of arrears of salary to him so as to enable him to defend himself in the enquiry proceeding. The Managing Director, however, did not consider either to replace the Enquiry Officer, Respondent No. 6 or to pass orders for payment of arrears of salary to the Petitioner so as to enable him to defend himself in the enquiry proceeding and under letter dated 6.1.1997, Annexure-16 informed the Petitioner that on verification of facts he was satisfied that the Conducting Officer Sri R.P. Singh does not have any bias or ill will against the Petitioner. In compliance of the notice dated 3.1.1997, Annexure-15 Petitioner appeared before the Enquiry Officer on 8.1.1997 and requested the Enquiry Officer to make available the copies of the relevant papers and documents for establishing his defence. The Enquiry Officer in response to the request directed the Presenting Officer to make available the papers and documents asked for by the Petitioner by 17.1.1997. On 17.1.1997 the Presenting Officer produced certain files on which he relied to prove the charges against the Petitioner. No specific document from the file was, however, produced and exhibited in the proceeding. The Petitioner was asked to go through the file produced. Petitioner, however, objected to the manner of production of evidence in the enquiry where the charged officer had to

investigate and disclose the documents which were to be relied upon against him. Petitioner, however, under protest went through the files and to his amazement found large number of pages from the note-sheet side as also from the correspondence side of the file missing and the file (s) produced appeared to have been tampered with and fabricated. One file produced by the Presenting Officer did not bear any number and its authenticity was doubtful. The fact that files produced by the Presenting Officer were not in order was brought to the notice of the Enquiry Officer. As regards summoning of the witnesses as per the list furnished under letter dated 9.12.1996, Annexure-14 it was observed by the Conducting Officer that stage for summoning the witnesses in the enquiry has not yet come. Even on the next date fixed the documents were not produced and subsequently the proceeding was adjourned to 22.1.1997 when the Enquiry Officer was not available as he was on leave. On the next date fixed i.e. 24.1.1997 the Presenting Officer was once again directed to make available the relevant papers by 29.1.1997 and the proceeding was adjourned to 4.2.1997. On 29.1.1997 Petitioner having perused the files produced by the Presenting Officer under his letter dated 1.2.1997 informed the Enquiry Officer the omissions/discrepancies noticed by him in the documents/files produced as also the fact that it was difficult for him to memorize the facts by perusal of the files and that the files were not in proper shape with large number of sheets missing and extra sheets inserted without being numbered as also interpolation made and requested the Enquiry Officer to make available the photocopy of the file (s) produced for inspection by the Petitioner including the file of M/s Polytex Corporation not produced so far. On 4.2.1997 as well during the enquiry proceeding aforesaid facts were placed before the Conducting Officer who ordered for production of the file concerning M/s Polytex Corporation and guard file of standing orders, office orders etc. and the proceeding was adjourned to 19.2.1997. On 7.2.1997 Petitioner approached the Presenting Officer to make available the file of M/s Polytex Corporation and the guard-file of the standing office orders but the Presenting Officer did not make available those files and Petitioner was asked to come on 13.2.1997. On that date also skeleton file (s) said to have been maintained by the Managing Director (Cell) was shown to the Petitioner. In the file (s) shown to the Petitioner number of standing/office orders were found missing. The relevant papers and documents asked for by the Petitioner were not shown to him. Petitioner brought these facts to the notice of the Enquiry Officer under his letter dated 18.2.1997, Annexure-17. The contents of the letter of the Petitioner dated 18.2.1997 was considered by the Enquiry Officer on 19.2.1997 who asked for the comment of the Presenting Officer over the letter of the Petitioner dated 18.2.1997 where after the Presenting Officer informed the Conducting Officer that no further document (s) /material (s) is available in connection with the charges levelled against the Petitioner and that the original file of M/s Polytex Corporation is not available in the office and the branch file was shown to the Petitioner. Further on the Petitioner's request for being informed about the norms of the Corporation which he is alleged to have violated Petitioner was told that the norms are available in the

1981 compendium of the standing orders but the Presenting Officer could not pinpoint the specific standing order which was violated by the Petitioner. The Conducting Officer under his letter dated 19.2.1997, Annexure-18 informed the Petitioner that the matter shall be finally heard on 26.2.1997 and he may file further show-cause if any by 26.2.1997 and appear before the Conducting Officer on that date. Proceeding, however, could not be conducted on 26.2.1997 as Petitioner suffered head injury and the proceeding was adjourned to 6.3.1997 on the basis of the intimation dated 26.2.1997 received by the Conducting Officer about the injury suffered by the Petitioner under letter dated 26.2.1997. Under letter dated 5.3.1997, Annexure-19 Petitioner once again informed the Conducting Officer that no papers or documents were produced in support of the charge that he violated the set norms. He also informed the Conducting Officer that the other contemporaneous documents as listed by the Petitioner in his letter dated 18.2.1997, Annexure-17 were never made available. The file of M/s Biscay Data Products Pvt. Ltd. was produced in a tampered and fabricated condition. The Petitioner also requested the Conducting Officer to ensure production of the documents as also to summon the witnesses named in his letter dated 9.12.1996, Annexure-14 as also for payment of his salary. Petitioner went through the proceedings dated 6.3.1997 and found misleading statements regarding production of available documents/files recorded therein where after Petitioner immediately pointed out that the files/documents referred to in the proceedings were never produced by the Presenting Officer. The Conducting Officer, however, proceeded with the proceeding on the next date i.e. 11.3.1997 as on that date the Presenting Officer produced sanction order in respect of M/s Biscay Data Products Pvt. Ltd. but the documents asked for by the Petitioner were not produced. On 14.3.1997 the Conducting Officer observed that he has taken note of the statement made by the Presenting Officer on different dates which shall be considered in the Enquiry Report. Petitioner under letter dated 20.3.1997, Annexure-20 again brought to the notice of the Enquiry Officer that the Presenting Officer has neither produced the documents requested for by the Petitioner nor he has made available the witnesses. In paragraph-30 of the interlocutory application Petitioner has asserted that neither the documents asked for by him nor the witnesses summoned by him were produced before the Conducting Officer. It is also asserted by the Petitioner that the statement of the Presenting Officer said to have been recorded by the Conducting Officer was never shown to him. Further pressure was mounted on the Petitioner that the proceeding has to be completed within the time fixed by the High Court and the Petitioner should cooperate in concluding the proceeding and under letter dated 31.3.1997, Petitioner was informed that final hearing could be done on 4.4.1997 in response where to Petitioner filed his written submission on 4.4.1997 which is contained in Annexure-21 series.

4. The Enquiry Officer submitted his report dated 24.4.1997 which was served on the Petitioner by the Managing Director under letter dated 30.4.1997, Annexure-22

inviting the Petitioner to submit his comments on the findings recorded by the Enquiry Officer. Petitioner having perused the Enquiry Report noticed that Conducting Officer recorded the statement of the Presenting Officer as also conducted ex parte enquiry on the same charges on 14.11.1996, requested the Managing Director under letter dated 13.5.1997, Annexure-23 to furnish a copy of the ex parte enquiry proceeding taken against him on 14.11.1996 along with the copy of the statement of the Presenting Officer recorded by the Conducting Officer with further request that he shall furnish his reaction to the findings recorded in the Enquiry Report after receipt of the statement of the Presenting Officer and ex parte proceeding taken against him on 14.11.1996. The Managing Director under letter dated 31.5.1997, Annexure-24 informed the Petitioner that pursuant to ex parte enquiry held on 14.11.1996 the Conducting Officer directed that the records be put up for dictating the report but in the meantime order of the High Court passed in L.P.A. No. 434 of 1996 was received and in the light of the orders of the High Court the report was not dictated and the proceedings were reopened by the Conducting Officer. As regards the statement of the Presenting Officer, the Managing Director informed the Petitioner that there is no recorded statement of the Presenting Officer available in the file. Petitioner thereafter requested for inspection of the records of the proceeding and found that the records did not contain any document/exhibit or even extracts from the file. Petitioner, accordingly, brought aforesaid omissions in the conduction of the proceeding to the notice of the Managing Director under his letter dated 11.6.1997 but the Managing Director without even making any reference to the letter of the Petitioner dated 11.6.1997 under letter dated 16.6.1997 asked the Petitioner to submit his reaction/comment to the Enquiry Report dated 24.4.1997 latest by 30.6.1997. Copy of the letter of the Petitioner dated 11.6.1997 and of the Managing Director dated 16.6.1997 is contained in Annexure-25 series. Petitioner submitted his comment to the findings recorded in the Enquiry Report under his letter dated 30.6.1997, Annexure-26. Perusal of the letter dated 30.6.1997 would indicate that the Petitioner assailed the findings of the Enquiry Officer in 12 pages under four heads i.e.:

(a) Preliminary objection to holding of the enquiry.

(b) Denial of adequate opportunity to defend.

(c) Perverse findings recorded by the Conducting Officer.

(d) Enquiry Report not faithful.

and supported his contention with nine annexures from pages-13 to 49. The Board of Directors considered the comment of the Petitioner dated 30.6.1997, Annexure-26 in its meeting held on 30.7.1997 in the light of the findings recorded by the Conducting Officer along with the letter of resignation of the Petitioner dated 9.12.1996, Annexure-13 and resolved not to accept his resignation and to award punishment of compulsory retirement to the Petitioner. The resolution of the Board

of Directors was communicated to the Petitioner by the Managing Director under Memo No. 1187 dated 6.8.1997, Annexure-27.

5. It is submitted on behalf of the Petitioner that the Board of Directors while considering the comment of the Petitioner dated 30.6.1997, Annexure-26 did not notice any of the four submissions raised under the heading (a) Preliminary objection to holding of the enquiry, (b) Denial of adequate opportunity to defend, (c) Perverse findings recorded by the Conducting Officer, (d) Enquiry Report not faithful, and proceeded to resolve that Petitioner be awarded the punishment of compulsory retirement. It is further submitted that failure to record reasons in support of the resolution to punish the Petitioner itself is a good ground to set aside the order dated 6.8.1997, Annexure-27.

6. It is further submitted that on merits as well findings recorded in the Enquiry Report is fit to be set aside as Petitioner was not given copy of the documents asked for as also on the ground that the witnesses were not produced, as was requested for by the Petitioner under letter dated 9.12.1996, Annexure-14 in spite of repeated request to furnish those documents and to produce the witnesses for examination, as is evident from his request contained in letters dated 18.2.1997, Annexure-17 referred to in the different paragraphs of the Interlocutory Application, so as to enable the Petitioner to refute Charge Nos. 1 and 2 levelled against him that he (Petitioner) violated the set norms of release while examining the proposal of Assistant Manager (Processing Officer) and recommended release of Rs. 19.33 lacs in favour of M/s Biscay Data Products Pvt. Ltd. to the General Manager and to further establish that release was recommended by the Petitioner as per the prevailing disbursement norms of the Corporation in case of joint financing in the light of the decision of the lead institution, BICICO to release the amount, as was done in the case of M/s Bihar Gases Jasidih and M/s Arnil Electronics, Patna where the release was made by the head office without seeking report from the Branch Manager. In this connection Petitioner placed reliance on the note of the then Managing Director, Sri Pratyush Sinha, I.A.S. who approved his recommendation to release the amount in favour of M/s Biscay Data Products Pvt. Ltd. before the Enquiry Officer but the Enquiry Officer in spite of having taken note of the notes of Sri Pratyush Sinha neither considered the same nor called Sri Pratyush Sinha to record his evidence in the proceeding in spite of request of the Petitioner to confirm the prevailing practice and disbursement norms from Sri Sinha. The Enquiry Officer having considered the defence of the Petitioner furnished against charge No. 3 concluded that Petitioner did not make recommendation for release in favour of a fake machine supplier, as is alleged against him in Charge No. 3. In this connection Enquiry Officer himself found on the basis of the report of the Sub-Committee of the Board of Directors that M/s Tirupati Associates, Calcutta is not a fake firm but proceeded to hold that the Petitioner wrongly recommended release of Rs. 5.46 lacs in favour of M/s Tirupati Associates, Calcutta to the General Manager without any physical verification of the arrival of machines at the site and that the name of M/s

Tirupati Associates, Calcutta was not included in the list of approved supplier. It is submitted that the charge being that Petitioner recommended for release in favour of fake machine supplier but the finding recorded by the Enquiry Officer is contrary to the charge, as such, could not have been relied upon. With reference to charge No. 5 it is submitted that Petitioner never directed for handing over of the cheque to the promoter instead of machine supplier M/s Tirupati Associates, Calcutta, as has been alleged in Charge No. 5. In this connection it is pointed out that after approval of the proposal to release the amount in favour of the machine supplier by the Managing Director to release the amount the file directly goes to the Accounts Section from the office of the Managing Director and cheques are handed over by the personnel of the Accounts Section to the recipient and Petitioner had no role to play in handing over of the cheque.

7. As regards charge No. 6 it is stated that the change of machine supplier from M/s Zenith Electro System (P) Ltd. to M/s D.C.M. Data Products (P) Ltd." was recommended by the Petitioner in the year 1981-82 which was also approved by the General Manager as by then the instructions of the year 1989 had not come into existence.

8. As regards Charge No. 7 it is submitted that the file containing the approval of the Managing Director was directly sent to the Accounts Section and it was the responsibility of the Accounts Section to satisfy itself about compliance of the conditions subject to which release was approved before releasing the amount.

9. As regards Charge No. 8 it is submitted that the same is consequential and does not appear to have been proved in view of the stand of the Petitioner taken in connection with Charge Nos. 1 to 7.

10. It is further submitted that during the conduction of the proceeding Petitioner remained under suspension until 8.4.1996 but was not paid subsistence allowance. Even after release from suspension he was not paid salary and, thus, was not allowed adequate opportunity to defend himself. Learned Counsel for the Petitioner further submitted that the charges levelled against the Petitioner are stale as the allegations are of the year 1981-82 and the draft charge-sheet was served on the Petitioner for the first time on 2.4.1993 i.e. after more than 10 years and appreciating such delay this Court while setting aside the dismissal order under judgment dated 8.2.1996, Annexure-2 observed that in case Respondents decide to continue with the departmental proceeding against the Petitioner liberty is granted to the Petitioner to urge the points raised in the petition in future which are not decided under judgment dated 8th February, 1996, Annexure-2.

11. Counsel for the Respondents opposed the submissions and submitted that true it is that the charges levelled against the Petitioner is of the year 1981-82 but Petitioner was issued notice dated 25.1.1990 even prior to service of the draft charge and appreciating such fact the Division Bench of this Court under orders

dated 23.3.1994, paragraph 24, Annexure-1 permitted the enquiry to proceed and as the matter has remained pending all along since the service of the draft charge in the year 1993 this Court under orders dated 8.2.1996, Annexure-2 granted the Respondents liberty to continue with the proceeding and the Division Bench under orders dated 28.11.1996, Annexure-11 directed the Petitioner to file show-cause reply to the charge-sheet/draft charges, this Court may not quash the proceeding on the ground that the charges are stale. As regards the submission that Petitioner was not paid subsistence allowance until March, 1996 and salary from April, 1996 until the date of the impugned order it is submitted that after the suspension of the Petitioner was revoked in compliance of the orders of the Division Bench passed in L.P.A. No. 434 of 1996 Petitioner was transferred to Ara Branch Office but as the Petitioner did not join the transferred post he could not be paid his salary. This Court may not draw any adverse inference on account of failure of the Petitioner to receive salary. Petitioner having failed to join the transferred post was not paid his salary. On the merits of the charges, learned Counsel for the Corporation submitted that the Enquiry Report is very exhaustive and the Enquiry Officer has found that Petitioner violated the terms of the sanction order and the agreement signed by and between the Corporation and the promoter of M/s Biscay Data Products Pvt. Ltd., as such, this Court should not interfere in the matter. In support of the submissions made above learned Counsel for the Corporation relied on the judgment of the learned Single Judge in the case of Alok Kumar Verma v. Bihar State Financial Corporation, reported in 2010 (1) PLJR 820 and Division Bench judgment in the case of [Brij Bihari Singh Vs. The Bihar State Financial Corporation and Others](#), . From perusal of the judgment of the learned Single Judge in the case of Alok Kumar Verma (supra) it appears that Petitioner of the said case was served with supplementary charge-sheet on his failure to join the transferred post despite the two orders of the High Court directing him to join his place of posting by specified date but Sri Verma continued to ignore the direction to join the transferred post and he was punished for his failure to obey the transfer order. Case of Brij Bihari Singh (supra) is also distinguishable on facts as in paragraph-8 of the said judgment the Court having considered the materials on record concluded that Appellant did not try even to explain the endorsement for release of the amount. In the instant case the Enquiry Officer himself recorded a finding that there was no ulterior motive of the Petitioner behind the release of fund to the promoter. In the circumstances, reliance placed by the learned Counsel for the Corporation on the aforesaid two judgments, according to this Court, is misplaced.

12. Preliminary objection of the Petitioner to the office order of the Managing Director dated 18.7.1996, Annexure-5 appointing Sri R.P. Singh, I.A.S., Respondent No. 6 as Enquiry Officer to continue the departmental proceeding against him on the basis of the draft charges dated 2.4.1993 and the order dated 30.8.1996, Annexure-7 on the ground that such proceeding was continued without the approval of the Board of Directors as was directed by the Division Bench of this

Court under judgment dated 23rd March, 1994, Annexure-1 does not appear to be correct in view of the order of the High Court dated 28.11.1996 passed in L.P.A. No. 434 of 1996, Annexure-11, whereunder the Division Bench directed the Enquiry Officer to conclude the enquiry positively within four months from the date of receipt of the order dated 28.11.1996 with further observation that if the Petitioner is desirous he can file a show-cause within 15 days from 28.11.1996 and in case no show-cause is filed, the Enquiry Officer was directed to conclude the proceeding even without the benefit of the show-cause filed by the Petitioner on the basis of the relevant materials already on record. In view of the order of the Division Bench of the High Court dated 28.11.1996, Annexure-11 directing the Enquiry Officer to conclude the proceeding initiated by the Managing Director under office order dated 18.7.1996, Annexure-5 does not appear to be contrary to the earlier decision of the Division Bench dated 23.3.1994, Annexure-1, in the circumstances, there is no merit in the preliminary objection raised by the Petitioner to the conduction of the proceeding by the Enquiry Officer on the basis of draft charges.

13. The other submission raised by the counsel for the Petitioner that the draft charge-sheet dated 2.4.1993 containing the allegations levelled against the Petitioner that during the financial year 1981-82 Petitioner recommended for release of the sanctioned amount violating the set norms of the Corporation are stale should be quashed on the ground of being stale also appears to be misconceived as the Division Bench of this Court having noticed the contents of the charge-sheet and the fact that Petitioner was issued notice dated 25.1.1990 even prior to service of the draft charge in paragraph 24 of the judgment dated 23.3.1994, Annexure-1 permitted the enquiry to proceed and as the matter remained pending all along since the service of the draft charge in the year 1993 another Division Bench of the High Court under orders dated 28.11.1996 passed in L.P.A. No. 434 of 1996, Annexure-11 directed the Enquiry Officer to conclude the proceeding within four months, as such, it is not possible for this Court to hold that the charges are stale since the matter remained under consideration all along with effect from 25.1.1990, the date on which first notice was issued to the Petitioner and thereafter as per the liberty granted by the two Division Bench of the High Court under orders dated 23rd March, 1994, Annexure-1 and 28.11.1996, Annexure-11 the proceeding has been conducted.

14. In response to the allegation set out in the draft charge-sheet Petitioner under his letter dated 9.12.1996, Annexure-14 and 18.2.1997, Annexure-17 requested the Enquiry Officer to direct the Presenting Officer to produce the documents and the witnesses mentioned in the two letters so as to enable the Petitioner to refute the gravamen of the charge that he recommended release of the sanctioned amount in favour of M/s Biscay Data Products Pvt. Ltd. to the General Manager violating the set norms as also to further enable him to establish that the recommendation was made by the Petitioner as per the prevailing disbursement norms of the Corporation in case of joint financing in the light of the decision of the lead institution BICICO to

release the amount, as was done in the case of M/s Bihar Gases, Jasidih and M/s Arnil Electronics, Patna where the release was made by the head office without seeking report from the Branch Manager. In this connection, Petitioner placed reliance on the note of the then Managing Director Sri Pratyush Sinha, I.A.S., who had approved the recommendation made by the Petitioner to the General Manager to release the amount in favour of M/s Biscay Data Products Pvt. Ltd. The enquiry Officer in the Enquiry Report has taken note of the notes of Sri Pratyush Sinha at internal page 9-10 of the report but failed to consider the same nor did he examine Sri Pratyush Sinha in the proceeding so as to confirm from him that at the relevant time no clear-cut instruction existed in the Corporation on disbursement of loans which was still more vague in respect of joint financing and according to Sri Sinha the decision taken by the lead institution was normally followed by the other institution and seldom if ever a cross-verification was carried out, once the lead institution had decided to disburse the loan. Sri Sinha having perused the file maintained in the case of M/s Biscay Data Products Pvt. Ltd. observed in his notes that the Corporation followed the lead given by BICICO and the decision to disburse the amount was taken at the level of the General Manager and/or the Managing Director. In my opinion, on account of failure of the Enquiry Officer to consider the notes of Sri Pratyush Sinha that clear-cut instruction did not then exist in the Corporation on disbursement of loans and as per practice evolved in the case of joint financing the decision taken by the lead institution was normally being followed by the other institution and seldom if ever a cross-verification was carried out, once the lead institution had decided to disburse the loan and the fact that disbursement in the case of M/s Biscay Data Products Pvt. Ltd. was made after the decision was taken at the level of the General Manager and/or the Managing Director the finding of the Enquiry Officer to hold the Petitioner guilty of charge Nos. 1, 2 that he violated the set norms in making recommendation to the General Manager for disbursement of the sanctioned amount in favour of M/s Biscay Data Products Pvt. Ltd. appears to be misconceived.

15. The Enquiry Officer having considered the defence of the Petitioner submitted in response to charge No. 3 concluded that Petitioner did not make any recommendation for release in favour of a fake machine supplier as is alleged against him in charge No. 3 since M/s Tirupati Associates, Calcutta is not a fake firm as has been found in the report of the Sub-Committee of the Board of Directors but contrary to the charge Enquiry Officer proceeded to hold that Petitioner wrongly recommended release of Rs. 5.46 lacs in favour of M/s Tirupati Associates, Calcutta to the General Manager-without any physical verification of the arrival of the machines at the sites and that M/s Tirupati Associates, Calcutta was not included in the list of approved supplier. Aforesaid findings that Petitioner wrongly recommended in favour of M/s Tirupati Associates, Calcutta without seeking verification of the arrival of the machines at the sites and that the said firm was not included in the list of approved machine supplier being not the charge cannot be

relied upon to establish charge No. 3, as such, the finding of guilt recorded by the Enquiry Officer in regard to charge No. 3 also appears to be misconceived.

16. Finding of the Enquiry Officer as regards charge No. 5 that Petitioner directed for handing over of the cheque to the promoter instead of machine supplier M/s Tirupati Associates, Calcutta also appears to be misconceived as after approval of the proposal to release the amount in favour of the machine supplier by the General Manager and/or Managing Director to release the amount the file directly goes to the Accounts Section from the office of the Managing Director and cheques are handed over by the personnel of the Accounts Section to the recipient and Assistant General Manager, Disbursement (Petitioner) had no role to play in handing over of the cheque.

17. Finding of the Enquiry Officer as regards charge No. 6 that Petitioner recommended for change of the machine supplier from M/s Zenith Electro System (P) Ltd. to M/s D.C.M. Data Products (P) Ltd. also appears to be vitiated as such recommendation of the Petitioner was made in the year 1981-82 and was also approved by the General Manager as by then the instructions of the year 1989 had not come into existence.

18. The finding of the Enquiry Officer as regards charge No. 7 also appears to be vitiated as the said finding has been recorded without appreciating the fact that after approval of the disbursement proposal file is directly sent to the Accounts Section and it is the responsibility of the Accounts Section to satisfy itself about compliance of the conditions subject to which release was approved before releasing the amount. Charge No. 8 being consequential is also not made out against the Petitioner in view of the findings contained in paragraphs 14 to 18.

19. Failure of the Corporation to pay subsistence allowance to the Petitioner until suspension of the Petitioner was revoked in compliance of the orders of the High Court dated 28.11.1996 passed in L.P.A. No. 434 of 1996, Annexure-11 and salary with effect from April 1996 till the date of issue of the impugned order of compulsory retirement dated 6.8.1997, Annexure-27 has also vitiated the proceeding as during the said period Petitioner had no funds to support himself and he has been requesting the Conducting Officer time and again under his letter dated 9.12.1996, Annexure-13, 14, 18.2.1997, Annexure-17, 5.3.1997, Annexures-19, 27.3.1997, Annexure-21 series to ensure payment but neither the Enquiry Officer nor the Managing Director ever paid any heed to the request of the Petitioner for release of his subsistence allowance, salary and thereby in the opinion of this Court he was not allowed adequate opportunity to contest the proceeding. The submission of the counsel for the Corporation that after release of the Petitioner from suspension he was transferred to the Branch Office of the Corporation at Arrah but he did not submit his joining, as such, was not paid the subsistence allowance, salary also does not appear to be correct. In case Petitioner had refused to join the transferred post the authorities were required to have given him

supplementary charge-sheet alleging his failure to join the transferred post at Arrah with instruction that until he joins at Arrah he shall not be entitled to be paid any salary. Supplementary charge-sheet alleging non-joining at Arrah having not been given to the Petitioner, in my opinion, learned Counsel for the Corporation is not right in submitting that Petitioner was not paid arrears of subsistence allowance, salary during the period of conduction of the proceeding for his failure to join the transferred post at Arrah.

20. Had the aspects taken note by this Court in paragraphs 14 to 19 above been considered by the Board of Directors while considering the second show-cause reply filed by the Petitioner, Annexure-26 together with the fact that the Enquiry Officer while holding the Petitioner guilty of the charges levelled against him did not consider the notes of Sri Pratyush Sinha, I.A.S. that "clear-cut written instruction did not then exist in the Corporation on disbursement of loans and as per practices evolved in the case of joint financing the decision taken by the lead institution was normally being followed by the other institution and seldom if ever a cross verification was carried out, once the lead institution had decided to disburse the loan" as was done in the case of M/s Bihar Gases, Jasidih and Anil Electronics, Patna with objectivity and in right perspective as also considered the fact that Enquiry Officer did not examine the three Managing Directors requested to be examined by the Petitioner under his letter dated 9.12.1996, Annexure-14 the occasion to punish the Petitioner of the charges levelled against him may not have arisen and Petitioner would have been saved of the ignominy which he had to undergo from the date he was served with the initial notice dated 25.1.1990 and the draft charge-sheet dated 2.4.1993 as also the order dated 18.7.1996, Annexure-5 and notice dated 21.9.1996, 3.1.1997, Annexure-8, 15 in the newspaper.

21. For the reasons aforementioned I set aside the impugned order of punishment dated 6.8.1997, Annexure-27 with cost which is assessed at Rs. 5,000/-. Petitioner be paid arrears of salary for the suspension period as also until the date of his superannuation as during the pendency of the writ petition he has attained the age of superannuation as early as possible, in any case within a period of two months from the date of receipt of a copy of this order before the Managing Director of the Corporation.

22. The writ application is, accordingly, allowed.