

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20884 of 2013

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Sangit Kumar Son of Late Mahendra Prasad Singh, P.W.I., Sonapur
Resident of Village - Desua, P.S. Ujjiarpur, Distt. - Samastipur

.... Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Railway,
Government of India, New Delhi
2. Senior Divisional Engineer, Co - Ordinate East Central Railway,
Sonapur
3. Sri Gulab Chand S/O Ram Gani Rai R/O Sarap Adam, P.O. Sonapur,
P.S. Sonapur, Distt. - Saran

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Rajeev Kumar Verma, Sr. Advocate Mr. Rajneesh, Advocate
For the Respondents	:	Mr. Bindhyachal Singh, Advocate Mr. Manish Prakash, Advocate Mr. Sachin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 31-07-2015

The writ petition is directed against the order as passed by the Central Administrative Tribunal (in short the “Central Administrative Tribunal”) contained in annexure – 1 passed on 27th August, 2013 in OA No. 104/2010.

The facts are not at all in dispute and the question involved is pure question of law.

Heard Sri Rajeev Kumar Verma, learned Senior Advocate and Sri Bindhyachal Singh, learned counsel for the

Union of India and with their consent this writ petition is being disposed of at this stage itself.

The short question that arises for our consideration is whether there is necessity of initiating departmental proceedings for taking action against a delinquent railway employee who has been convicted for an offence involved in moral turpitude. Here, the petitioner is convicted in a trap case allegedly for accepting illegal gratification. His appeal is pending before the High Court. He was issued a cryptic notice stating that why he should not be punished in a departmental proceedings as a consequence of his conviction in the criminal case.

The grievance of the petitioner is that no departmental proceedings at all was initiated and straightway an order was issued that he has been convicted in the case, as aforesaid, he is removed from service.

Sri Rajeev Kumar Verma, learned senior counsel draws attention of this Court to Rule 14 of the relevant service rules as also the guiding circular issued by the Railway Board. The Rules contemplates disciplinary authority to pass such orders, as it may deem fit, but the Board's Circular clarified it, stating that the punishment could





be either dismissal or removal or compulsory retirement in such an event. Therefore, what is the appropriate punishment would be a question to decide. Because, the three punishments contemplated are totally different punishments. In compulsory retirement, he gets pension and retiral dues, he does not forfeit part of its service. In removal, he forfeits his retiral dues but he can seek re-employment, but when it comes to its dismissal, he loses his entire past career and his future. Thus, there would be a requirement to take a decision in regard to one or the other punishment. As such, a proper show cause and a proper proceeding have to be done.

On the other hand, Sri Bindhyachal Singh, learned counsel for the railway submits that there is hardly an option left to the disciplinary authority, a show cause was indeed issued and an order has been passed. There is full compliance of natural justice.

Having considered the matter, in our view, the submissions as made by Sri Verma have to be accepted in view of what the Apex Court has said in the case of **S.L. Kapoor Versus Jagmohan** since reported in **AIR 1981 SC 136**; this decision, as discussed, requirements of natural justice are met only if opportunity to represent is given in

view of proposed action. Whereafter, an order has civil adverse consequence, it cannot be passed without full compliance of principle of natural justice. The only exception where, in given facts, there is no discretion upon the authority and there can be only singular punishment.

Here, admittedly, the show-cause itself talks about initiation of a departmental proceeding. The reason being that various optional punishments were possible, petitioner had a right to plea for a lesser punishment. He could bring on record various facts, justification, various defences to persuade the authority that punishment of dismissal and removal from service was not the punishment in the facts and circumstance. He could have persuaded the authorities that compulsory retirement would meet the ends of justice.

Therefore, it was necessary to indicate in the show cause as to what penalty or punishment is proposed, so that the petitioner could meet those and persuade the authorities to take another view of the matter. How the discretion has to be exercised can be argued and quoted by the petitioner. Therefore, to say that the requirements of natural justice are made by mere issuance of notice, without



indicating the punishment and without really considering the matter, cannot be sustained. Therefore, we are constrained to hold that on this ground alone the order of the Tribunal as also the order of removal from service cannot be sustained. However, as the petitioner had been put under suspension prior to the order of removal from service, he would be deemed to be under suspension as a consequence of quashing of the order of punishment, and the railways would issue proper notice and take necessary decision in the matter within a period of six months.

Thus, the writ petition is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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