

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.80 of 2014

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Niraj Kumar Srivastava, son of Shailesh Kumar Srivastava, Ex-Senior Commercial Clerk, N.E. Railway, Chapra (Saran) and former Commercial Clerk, N.E. Railway, Siwan, presently Commercial Clerk, N.E. Railway, Chapra, permanent resident of Village - Siswan, P.S. Siswan, Distt. - Siwan

.... Petitioner

Versus

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur
2. The Divisional Railway Manager, N.E. Railway, Varanasi
3. The A.D.R.M., N.E. Railway, Varanasi
4. The Senior Divisional Commercial Manager, N.E. Railway, Varanasi
5. The Divisional Commercial Manager, N.E. Railway, Varanasi
6. The Senior Divisional Personnel Officer, N.E. Railway, Varanasi

.... Respondents

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Appearance :

For the Petitioner : Mr. Shekhar Kumar Singh, Advocate

For the Respondents : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

2 16-07-2015 Petitioner was posted at Siwan Junction as Commercial Clerk under N.E. Railway. A charge sheet dated 12.03.2012 was served upon him for imposing major penalty under the Railway Servants (Discipline & Appeal) Rules, 1968. The charges basically related to attempts made by the petitioner to take refund of Rs.1158/- on two occasions against concession tickets meant for S.Cs/S.Ts. for journey from Chapra to Lokmanya Tilak showing it to be cancelled. The charge sheet is annexed with Annexure 1.

Enquiry was held. The enquiry officer exonerated the petitioner on both the counts. The enquiry report is Annexure 5.

The enquiry report was not accepted by the disciplinary authority and he gave detailed reasons in terms of Annexure 6 as to how the conclusion reached by the enquiry officer was erroneous. Annexure 6 not only contains a notice of disagreement but also the materials on which such disagreement was reached. The petitioner offered his explanation. The disciplinary authority did not accept the said explanation and decided to impose punishment of reduction of pay scale to a lower pay scale for a period of three years. The order of punishment is dated 26.02.2004 and annexed as Annexure 8.

The order of punishment was assailed before the appellate authority as well as revisional authority, who did not interfere with the same. The petitioner, therefore, decided to invoke the jurisdiction of the Central Administrative Tribunal, Patna Bench, Patna by filing O.A.No.04 of 2006. On its rejection a review application, numbered as R.A. No.19 of 2009, was filed. The Tribunal in question did not interfere with the order of punishment imposed upon the petitioner.

In the present writ application, not only the order



dated 01.09.2008 passed in O.A. No.04 of 2006 is under challenge, but even the order dated 31.08.2012 passed in R.A. No.19 of 2009 is under challenge. In the alternative, the petitioner also seeks quashing of the order of punishment dated 26.02.2004 issued by the Divisional Commercial Manager, N.E. Railway, Varanasi and the order dated 03.11.2004 passed by the appellate authority.

The Court has heard the petitioner extensively. The petitioner takes advantage of the finding given by the enquiry officer, which has tilted in his favour, but the matter did not rest at that, for the reason that materials are there, evidence is there, but somehow the conclusion reached by the enquiry officer is tilted in favour of the petitioner pronouncing him not guilty on a skewed if not a flawed reasoning. The Court does not want to go into the details of those facts, because Annexure 6, the notice of disagreement, points out the infirmity in the conclusion reached by the enquiry officer. Those materials ultimately weighed with the disciplinary authority as well as the appellate authority, who opined that it was a case for award of punishment and not exoneration.

The Central Administrative Tribunal dealt with the contentions of the petitioner on all the aspects of the matter in

O.A. No.04 of 2006 and did not find any flaw, factual or legal, with regard to the order of punishment, which visited the petitioner.

Whatever lacuna, the petitioner felt, remained in the adjudication of the O.A., was pointed out in review application, registered as R.A. No.19 of 2009. The order in review is also a detailed one. Despite the so-called omissions in the O.A., pointed out by the petitioner in the order of the Tribunal, he did not succeed in making out a case, which could convince the Tribunal to reconsider the original decision, rendered in the O.A.

In normal course of things, the matter should have been allowed to rest but since the petitioner has right of judicial review against the order of the Tribunal, he decided to challenge the orders by filing the present writ application.

After hearing the Counsel for the petitioner as well as the Counsel for the Union of India representing the Railways, the Court is not convinced that a case for interference on the finding of guilt which formed the basis for imposition of punishment is required to be revisited, especially when the Court does not find any error in the order of the Tribunal passed in the O.A. or the review application. The two decisions

are well informed.

Counsel for the petitioner thereafter, however, makes a submission on the ground of disproportionality in the punishment order *vis-a-vis* fraud committed by the petitioner. His stand is that even, according to the respondents, it was only an attempt made by the petitioner to defraud the respondents on two occasions by trying to seek refund of Rs.1158/-, but no loss as such was ultimately caused to the Railways. The petitioner, however, has been given a rather harsh punishment of reducing him to a lower scale of pay from Rs.4000-6000 to Rs.3200-49000 for a period of three years. The order of punishment has serious financial consequence for the petitioner and a substantial financial loss till the rest of his period of service.

The principle of proportionality in imposition of penalty in Service Jurisprudence has come to be established and accepted. If any punishment is disproportionate to the so-called offence, then the same is held to be arbitrary and irrational failing the touchstone of Article 14 of the Constitution of India. In such situations, Courts have interfered and given suitable directions for remedying the harm caused to a delinquent.

Looking at the nature of the offence and also taking

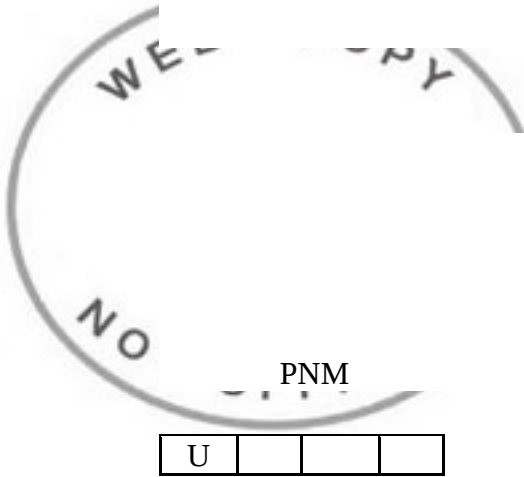


into consideration the stand of the Counsel for the petitioner that there is nothing adverse against the petitioner so far even if the allegation against the petitioner is accepted on the face value, at the most, the petitioner made an attempt to defraud the Railway administration of a sum of Rs.1158/- on two occasions. For an attempt he has been punished as if he has caused actual loss to the Railways and that too of significant amount. If the punishment and charge is weighed on a scale, the Court surely comes to a considered opinion that the punishment of reduction in lower pay scale for three years is disproportionate to the charges and the allegations brought against the petitioner.

To that extent, the matter requires re-consideration. The order of punishment passed by the Divisional Commercial Manager, N.E. Railway, Varanasi, contained in Annexure 8, the order of affirmance passed by the appellate authority, contained in Annexure 10, and the order passed by the revisional authority, contained in Annexure 12, are hereby set aside. The matter is remanded back to the disciplinary authority for imposition of any other punishment commensurate with the guilt and the clean past service record.

The writ application is allowed limited to the extent

indicated above. Interference as above, however, is not an
exoneration of the charge and finding of guilt of the petitioner.



(Ajay Kumar Tripathi, J)

(Anjana Mishra, J)

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