

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2610 of 2013

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1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
 2. Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
 3. General Manager (Vigilance/Chief Vigilance Officer) East Central Railway, Hajipur, Vaishali.
 4. Additional Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur.
 5. Senior Divisional Personnel Officer, Samastipur Division, East Central Railway, Samastipur.
 6. Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
 7. Assistant Commercial Manager, Samastipur Division, East Central Railway, Samastipur.
 8. Sri B.K. Rai, Senior Enquiry Officer (Vigilance) of the Office of Chief Vigilance Officer, East Central Railway, Hajipur, Vaishali.
 9. Station Superintendent, Simri Bakhtiyarpur.
 10. Chief Reservation Supervisor, Simri Bakhtiyarpur. Petitioners.
- Versus

Dinesh Kumar Ray, Son of Sri Ram Sakal Ray, resident of Village Hakimabad, P.O. Kharaj Jiwatpur, P.S. Samastipur, District- Samastipur. Respondent.

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Appearance :

For the Petitioners : Mr. Naresh Dikshit, Adv.

For the Respondent : Mr. Gautam Saha

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-05-2015

Heard learned counsel for the Union of India and learned counsel for the sole-private respondent and with their consent, this writ petition was heard for final disposal at this stage itself.

2. The writ petition has been filed by the Union of India and the East Central Railway, Hajipur, Vaishali and its officers, being aggrieved by the order dated 16.02.2012 passed

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by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') in O.A. No.407 of 2011 as filed by the sole-respondent. The said original application was allowed by the Tribunal which directed the Railways to conduct enquiry *de novo* after change of Inquiry Officer and change of venue.

3. It appears that the sole-respondent Sri Dinesh Kumar Ray was appointed on compassionate ground on 07.03.2008 on Class-III post of Enquiry-cum-Reservation Clerk (E.C.R.C.) and in due course was posted at Simri Bakhtiyarpur Railway Station. It appears that while scrutinizing the electronic data of tickets booking and reservations at the data headquarters at Kolkata, it was detected that in the month of December, 2009 the sole-respondent had allegedly shown cancellation of certain trains consequently cancellation of reservations/tickets which soon thereafter was reset as normal running. Accordingly, wrongful refunds in excess of Rs.20,000.00 was shown under his entries in the computer logs. Upon this report, the Senior Divisional Commercial Manager, Samastipur, who was the disciplinary authority, in so far as the sole-respondent is concerned, issued memorandum of charges to the sole-respondent and on 08.10.2010, he was

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directed to appear before Sri B.K. Roy, Senior Inquiry Officer (Vigilance) Office of the Chief Vigilance Officer, East Central Railway, Hajipur. In the departmental proceedings so initiated, on 21.02.2011 the sole-respondent appeared and submitted a representation requesting for change of Inquiry Officer which is Annexure-4 to the writ petition. In this, the sole-respondent objected that the Inquiry Officer was always biased against employees and would any how give a finding against the employee. On the same date, the sole-respondent filed an application which is Annexure-5 to the writ petition before the Additional Divisional Railway Manager, East Central Railway, Samastipur raising the same plea and also relying on a judgment of the Patna High Court in the case of **Narayan Prasad Sah Vs. the Union of India and others** (C.W.J.C. No.3740 of 2007 disposed of on 12.02.2008). A perusal of these two Annexures (Annexures-4 & 5) would show that the only reason for raising the plea of bias was an apprehension that the Inquiry Officer always ruled against the employees and in favour of the Railways. Railways did not accede to the request of the sole-respondent. The sole-respondent then immediately filed O.A. No.407 of 2011 before the Tribunal. Before the Tribunal, the sole-respondent urged the same grounds once

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again placing reliance on the decision of the Patna High Court in the case of **Narayan Prasad Sah (supra)** as also the judgment of the Apex Court in the case of **Union of India and others Vs. Prakash Kumar Tandon** since reported in **(2009) 2 Supreme Court Cases 541**. The Tribunal, inter alia, held that no sooner the plea of bias was raised Railway ought to have changed the Inquiry Officer and further that as the Apex Court had held in the case of **Prakash Kumar Tandon (supra)**, no Officer of the Vigilance Department be appointed as Inquiry Officer and, thus, allowed the application of the sole-respondent directing the Railways to start enquiry *de novo* after changing the Inquiry Officer and the venue by its judgment and order dated 16th of February, 2012. Aggrieved by the aforesaid, the present writ petition has been filed by the Railways and this Court, while issuing notice to the sole-respondent in the writ petition, by order dated 30.09.2013 stayed the order of the Tribunal. Upon appearance of the parties and after hearing them at length, the matter has been taken up for final disposal.

4. Having considered the matter, in our view, the writ petition is fit to be allowed and the order of the Tribunal is liable to be set aside. Firstly, we must notice that it is now the principle accepted beyond doubt that while dealing

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with the question of bias, the only thing that a delinquent has to show is that there is a likelihood of bias and not factual or actual bias. This is a part of fair hearing and fair justice which is integral part of the principles of natural justice. We do not think that anyone can doubt these propositions but the question is how far it is applicable to the facts of the case. In our view, the first consideration is whether any apprehension however unwarranted can be raised as a plea of bias or should it have some reasonable material to show likelihood of bias. Unsubstantiated allegations of any nature or unsubstantiated apprehension of any nature cannot be taken to substantiate the plea of bias. It is a reasonable manner, reasonable apprehension and under reasonable circumstances that is relevant. The approach of the Tribunal appears to be, as canvassed by the sole-respondent also, that no sooner any person raises plea of bias, the Inquiry Officer should be changed irrespective of the materials on which such apprehension is based. In other words, as the learned counsel for the sole-respondent would argue that merely for the sake of arguing if any delinquent expresses apprehension of bias without anything to substantiate that apprehension that is sufficient. We regret our inability to agree to this line of submission. If this is permitted then probably no

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enquiry can at all be conducted because the bald assertion of bias would be raised against the Inquiry Officer till the Inquiry Officer favourable to the delinquent appears. It is not the choice of the delinquent as to who would be the Inquiry Officer. We hold accordingly.

5. Now to the facts of the case. The sole-respondent at the very initial stage raised the plea of bias as apparent from Annexures-4 & 5 to the writ petition. The only ground taken therein was that the Inquiry Officer, Sri B.K. Rai was always pro-prosecution/pro-vigilance and in almost all cases where he was made Inquiry Officer, he would give a finding against the delinquent. With reference to the case of **Narayan Prasad Sah (supra)** of this Court, it was urged that it was not proper for the Officers of the Vigilance Department to hold enquiry in vigilance cases. This is all. This is all the material to raise and substantiate the plea of bias.

6. Firstly, we would like to say that merely because an Inquiry Officer has found delinquent guilty cannot be a cause for raising the plea of bias unless it is shown that the said Inquiry Officer has been held to be biased and his reports condemned for that reason. Regrettably, not a single instance could be shown. Secondly, vehement reliance was placed not

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only before the Tribunal but before this Court on a Division Bench judgment of this Court in the case of **Narayan Prasad Sah (supra)**. We have gone through the judgment and the material findings of the Court in the said judgment, which are quoted hereunder:-

“.....The undisputed fact is that no Presenting Officer has been appointed in the departmental enquiry and the Enquiry Officer himself has acted as the Presenting Officer to conclude the enquiry. Thus, the Enquiry Officer has assumed the role of the prosecutor affecting the fairness of the enquiry proceeding.....

.....From the record it also appears that the disciplinary authority has acted without application of mind having assumed that all the charges against the delinquent have been proved notwithstanding the fact that the Enquiry Officer has only found the first two charges proved, and found that third charge is not proved.....”

7. From the aforesaid, it is clear that this Court in

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the case of **Narayan Prasad Sah (supra)** neither decided nor had the occasion to decide as has been sought to be canvassed on behalf of the sole-respondent that Officer of Vigilance cannot be Inquiry Officer and the reliance placed on the said judgment by the Tribunal was wholly misconceived. The proposition as canvassed is not to be found in the said judgment of this Court.

8. It was next urged on behalf of the sole-respondent on the authority of **Prakash Kumar Tandon (supra)** that no Officer of the Vigilance Department could be made Inquiry Officer. The Tribunal accepted the said submission based upon the said judgment. We regret that the judgment is not in such a broad terms as is being sought to be argued. We must first point out that in the present case the allegations being of intentionally causing loss to the Railways by wrongly showing refund of tickets because of wrongful entries of cancellations of trains and may be consequently defalcation, the disciplinary proceedings were registered as a Vigilance Case not being matter of other nature of disciplinary proceedings like disciplinary misconduct or other delinquencies. It was not a case where a vigilance raid or a vigilance enquiry by the Vigilance Department of East Central

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Railway was ever conducted prior to initiation of departmental proceedings. Information regarding manipulation of computer data, having been received from Kolkata, the Commercial Department at Hajipur initiated the departmental proceedings, which was labeled as a vigilance case. That is all.

9. Now, we may refer to the case of **Prakash Kumar Tandon (supra)**. Here the preliminary enquiries were conducted by the Vigilance Department and, as would be apparent from the facts noted in paragraph-7 of the reports, one of the issues on which the High Court had set aside the enquiry was that the Inquiry Officer was a Chief Engineer on deputation to the Vigilance Department. He was undisputedly an Officer senior to the disciplinary authority. Thus, on the finding that the Inquiry Officer, being an Officer senior to the disciplinary authority, it was held that the enquiry was neither legal nor justified and it was against the principles of natural justice. The writ petition filed by the Union of India challenging the order of the Tribunal was dismissed. In paragraph-12 of the reports, this is what the Apex Court has held, which is quoted hereunder:-

“12. The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer

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was the Chief of the Vigilance Department. He evidently being from the Vigilance Department, with a view to be fair to the delinquent officer, should not have been appointed as an enquiry officer at all.”

10. Thus seen, the Court was clear that where the proceedings were pursuant to enquiries and raids conducted by the Vigilance Department, in such an event, Officers of the Vigilance Department should not be made Inquiry Officer as he would naturally be biased. The question is, are these the facts present in the present case. We regret that the facts are totally distinguishable. Merely because the case has a nomenclature of vigilance case, which as stated above is merely because of charge of financial impropriety, there is nothing on record to show that it was pursuant to any vigilance enquiry or vigilance raid or vigilance case conducted by the Vigilance Department of East Central Railways that the proceedings were initiated.

11. Thus, in our view, the appointment of Sri B.K. Rai, the Senior Inquiry Officer in the office of the Chief Vigilance Officer, East Central Railway cannot be questioned. We are unable to uphold the view taken by the Tribunal and/or as canvassed on behalf of the sole-respondent. Thus, we have

no option but to allow the writ petition and set aside the judgment and order of the Tribunal and direct that the original application as before the Tribunal be dismissed. The writ petition is, thus, allowed. As the matter is serious and has been pending in this Court and the Tribunal, if it has not been proceeded for any reason, the Railways would be well advised to proceed and conclude the matter at the earliest.

(Navaniti Prasad Singh, J.)

Jitendra Mohan Sharma, J. I agree.

(Jitendra Mohan Sharma, J.)

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