

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3044 of 2011

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1. Mannu Choudhary Late Badal Choudhary Skilled Gr. Ii, Moulder, Ex. T. No. 15453/Gif, Jamalpur Workshop, P.O. Jamalpur, Dist. Munger, R/O Bajarangbali Chowk, P.O. Jamalpur, Dist. Munger.

.... Petitioner/s

Versus

1. The Union Of India Through The Genral Manager, Eastern Railway, 14, N.S. Road, Fairlie Place, Kolkata.
2. The Chief Works Manager(W), Eastern Railway, Jamalpur Workshop, Jamalpur.
3. The Deputy Chief Mechanical Engineer(P), Eastern Railway, Jamalpur Workshop, Jamalpur.
4. The Assistant Works Manager, Foundry Jamalpur Workshop, Eastern Railway, Jamalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S Rajani Kant Jha & Rajani Ranjan Pd.Singh

For the Respondent/s : M/S Anil Kumar Sinha & Abhimanyu Vatsa

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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: 10-08-2015

The petitioner was a Class-III railway employee. He was removed from service. He was basically charged for being in unauthorized occupation of the out-house of a senior officer's residence as also for abusing the senior officer and illegal connection of electricity from that house.

2. The writ petitioner contended that he was in permissive possession of the out-house and he had even moved the Tribunal for direction to the Railways to allot out-houses to such staff. The Tribunal at one stage had agreed , but the Supreme Court held that the out-house could not be allotted, and there was no question of any permissive possession. Upon being asked to vacate, the petitioner did not vacate the out-house, and he is alleged to have abused the



officer in whose compound the petitioner was residing in the out-house. For the out-house he had an illegal electric connection from the house of the officer. It is upon these facts the Railways ultimately, after the departmental proceedings, passed orders for removal from service in respect of the petitioner. He appealed unsuccessfully, and then came to the Tribunal. The Tribunal has also refused to interfere. It is this order that is under challenge in this writ petition.

3. Having heard learned counsel for the writ petitioner and Mr. Anil Kumar Sinha, learned counsel for the Railways, we are not inclined to interfere with the order. In judicial review this Court does not sit in appeal over the order of Tribunal. This Court only examines the procedure and the proceedings, and not the merit of the decision. The basic facts not being in dispute, we would ordinarily not interfere, but there is one aspect which forces us to interfere.

4. The petitioner has served the Railways for nearly twenty two years. It is also not in dispute that initially he entered the out-house with the consent of the officer. It is also not in dispute that the petitioner and others were trying to agitate for formal allotment of the out-house, and they failed at the level of Apex Court. He was certainly guilty of not vacating the out-house of which he was only in permissive possession. Having been given the possession, the petitioner naturally had to have electricity which he used unauthorizedly. Therefore, it cannot be said that the petitioner was not guilty, but then to us, it appears that the punishment was far in excess of the nature of guilt. It shocks our conscience that a person, who had served twenty two years without blemish, should be removed from service denying all retirement dues. By now, he would have reached the age of superannuation also. Accordingly, we consider that the punishment of removal is grossly disproportionate to the delinquency.

5. We would, accordingly, set aside the order of punishment, and for the sake of punishment alone, remand the matter to the Deputy Chief Mechanical Engineer(P), Eastern Railway, Jamalpur Workshop, Jamalpur(respondent no.3) to reconsider, as, in our view, compulsory retirement on the day from which the petitioner has been dismissed, would normally subserve the purpose. We would, therefore, request respondent no.3 to pass necessary order of punishment accordingly within a period of one month from the date of production of a copy of this order.

6. With the above direction and observation this writ petition is disposed of.

(Navaniti Prasad Singh, J)

BK.Roy/-

(Nilu Agrawal, J)

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