

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12464 of 2010

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SANJAY KUMAR TIWARI, SON OF SHRI BALESHWAR TIWARI, RESIDENT OF
WEST ABHIYANTA NAGAR, RAJDHANI CO-OPERATIVE, POLICE STATION
DANAPUR CANTT. DISTRICT PATNA

.... Petitioner

Versus

1. THE UNION OF INDIA THROUGH CHAIRMAN, RAILWAY BOARD, NEW DELHI
 2. THE GENERAL MANAGER, EAST CENTRAL RAILWAY, HAZIPUR
 3. THE DIVISIONAL RAILWAY MANAGER, ECR, DANAPUR, PATNA
 4. THE SR.DIVISIONAL COMMERCIAL MANAGER, EAST CENTRAL RAILWAY, DANAPUR
 5. THE DIVISIONAL PERSONNEL OFFICER, ECR, DANAPUR, PATNA
- Respondents

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Appearance :

For the Petitioner : Mr. Shekhar Singh, Advocate and
Mr.M.N.Tiwary, Advocate

For the Respondents : Mr. Arvind Ujjwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

13 13-01-2015 The petitioner seeks compensation from respondents-railways for damages (physical disability) caused by Mr.V.Upadhyay and Mr. S.S.Priyadarshi, both booking clerks, posted at Visheshwaraiya Bhawan, Bailey Road, Patna resulting into permanent disablement of the right eye and loss of vision, in course of booking reservation tickets.

2. Before I proceed further in the matter, it would be relevant to give a brief background of the pleadings available on the record.

3. The case of the petitioner who is a Civil engineer posted in Rural Development Department (Government of Bihar) at Chapra, in short is as follows:-

4. On 16.9.2008 at about 1 PM, the petitioner along with



his family had gone to Railway reservation counter situated at Visheshwaraya Bhawan, Bailey Road, Patna for booking tickets from Patna to Kolkata and back. After booking the tickets, the booking/counter clerk demanded the fare which was not clearly heard by the petitioner because of the bustling at the reservation counter. The petitioner as such again enquired for the fare, which annoyed the booking clerk, who while repeating the amount also hurled abuses. The petitioner deposited Rs.4000/- and asked him not to abuse and behave properly. The booking clerk instead came out and assaulted him by fists and slaps severely injuring his eyes. The booking clerk even in the process also snatched one of the reservation tickets (from Kolkatta to Patna) and cancelled it. The name of the booking clerk transpired as Mr. V. Upadhyay. One Mr. S.S.Priyadarshi, a colleague of Mr. Upadhyay was constantly inciting him. The petitioner's wife took him immediately to a nearby doctor, namely, Dr.Sanjay Singh, an eye specialist, who gave him First Aid. The petitioner was taken to New Gardinar Road, Government Hospital, Patna, from where he was referred to the PMCH for treatment. Before going to PMCH, the petitioner went to Shastrinagar police station and lodged a case giving rise to Shastrinagar Police Station Case No. 355 of 2008 under sections 341, 323 and 379 of the IPC. As instructed, the

petitioner came to J.P.Hospital Shastrinagar, which prepared the injury report. The petitioner was finally admitted to the PMCH.

5. The doctors of the PMCH opined that very serious injuries have been caused resulting into retinal detachment with vitriol hemorrhage in posterior segment, Rt. Eye., Rt. Eye ball coat circumferentially thick and referred him to AIIMS New Delhi/Shankar Netralaya, Chennai. The petitioner having no options, rushed to Shankar Netralaya, Chennai where he was admitted and operated twice. However, in spite of specialized treatments, his vision did not return.

6. In the meantime, Charge-sheet was submitted under sections 341,323,325,379 of the Indian Penal Code against Mr. V.Upadhay. Charges were framed under sections 341,323,325 and 379 of the Indian Penal Code, bearing Trial no. 769 of 2010 (GR No.4786/2008, Shastrinagar Police station Case No. 355/2008)). Later on, Mr. S.S.Priyadarshi was summoned as an accused under section 319 Cr.P.C. vide order dated 29.1.2011. Mr. S. S. Priyadarshi filed a petition for discharge on 12.8.2011 which was rejected on 6.10.2012 and charges were framed against him under sections 341,323,325 and 379 of the Indian Penal Code on 4.2.2013. The matter was posted for evidence.

7. The complainant, Mrs. Anupma Tiwari, wife of the



petitioner, simultaneously also made a complaint to the Senior Divisional Commercial Manager (in short 'the Senior DCM'), East Central Railway (in short the ECR), Danapur on 23.9.2008 for disciplinary action against the two railway booking clerks for their alleged misconduct and high handedness. A copy of the complaint is annexed as Annexure 3 to the writ petition.

8. In view of the aforesaid complaint, on the direction of the higher official, the Public Complaint Inspector, Danapur conducted an enquiry and submitted his report on 20.10.2008. In his report, the Public Complaint Inspector, Danapur came to a finding that the allegations were not substantiated against the employees. However, the Senior DCM vide order dated 24.10.2008, recorded on the note sheet, directed for 'confronted enquiry' summoning all the parties to place their case. In view of the direction issued by the senior DCM, a letter dated 27.10.2008 was sent to the wife of the petitioner, Smt. Anupma Tiwari requesting her to participate in the enquiry fixed at 12 Noon on 31.10.2008 in the office of the Senior DCM, ECR, Danapur. The petitioner immediately sent a letter dated 29.10.2008 stating therein that he or his wife would not be able to participate in the enquiry due to eye operation performed at Shankar Netralaya and the doctor's advice for rest. He also made request to fix enquiry on any date after 15.12.2008. It



appears that on 30.10.2008, a letter was sent to the petitioner's wife by the respondents through the special messenger with a request that in view of urgency, she should attend the enquiry fixed for 31.10.2008. The petitioner or his wife did not turn up in the enquiry, fixed for 31.10.2008 and the Public Complaint Inspector gave his report on 31.10.2008 on the basis of which the suspension of the both the railways staff were revoked with the immediate effect. They were issued minor penalty of withholding one privilege pass for the year 2010. The petitioner has submitted that he has not been given fair opportunity to represent his case.

9. The Court, ordinarily, would not enter into the merits or otherwise of the materials on the basis of which the disciplinary authority arrives at its conclusion or findings, unless and until there is an error of law or the finding is based on no material. The Court would also be reluctant to interfere with quantum of punishment unless and until it is disproportionate or not in consonance with the offence committed.

10. The issue before this Court is a limited one as to whether the petitioner or his wife was provided sufficient opportunity before the Senior DCM or before the Enquiry officer or the Public Complaint Inspector to represent their

case.

11. I find that for the first time, letter dated 27. 10. 2008 was sent to the wife of the petitioner, Smt. Anupma Tiwari requesting her to participate in the confronted enquiry fixed at 12 Noon on 31.10.2008. The petitioner without delay wrote a letter dated 29.10.2008 requesting the respondents for extension of time, as he was advised rest in view of eye operation performed at Shankar Netralaya, Chennai. However, the request was not heeded.

12. It is not the case of the respondents that the petitioner did not undergo eye operation at Shankar Netralaya, Chennai or did not suffer serious eye injuries leading to vision impairment. Denying indulgence in the circumstances would amount to denial of just and reasonable opportunity to place one's case. It cannot be said, in view of operation undertaken, that the petitioner tried to delay the enquiry. It would be fair and just that the petitioner is given one more opportunity to present his case before the Public Complaint Inspector in the confronted enquiry as directed by the Senior DCM, ECR, Danapur. Situated thus, I direct the Senior DCM, ECR, Danapur as well as the Public Complaint Inspector to provide an opportunity to the petitioner to put in his case, before appropriate authority, within six weeks from the date of

receipt/production of a copy of this order.

13. So far as criminal case bearing Shastrinagar Police station Case No. 355 of 2008, GR no. 4786 of 2008, Trial No.769 of 2010 is concerned, the learned trial court, in seisin of the matter, would expedite its hearing on the priority basis so as to expedite the trial within a period of one year from the date of receipt of a copy of this order, as the case is of 2008.

14. It is made clear that this Court has not gone into the merits of the case.

15. The writ petition stands disposed of with the aforesaid observations.

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(Samarendra Pratap Singh, J)

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