

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20974 of 2013

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1. The Union Of India Represented Through The General Manager, N.E. Railway, Gorakhpur.
 2. The Divisional Railway Manager, N.E. Railway, Varanasi Division, Varanasi (U.P.).
 3. The Senior Divisional Personnel Officer, N.E. Railway, Varanasi Division, Varanasi (U.P.).
 4. The Senior Divisional Engineer (II), N.E. Railway, Varanasi Division, Varanasi (U.P.).
 5. The Assistant Divisional Engineer, N.E. Railway, Balia (U.P.).

.... Petitioner/s

Versus

1. Ram Chandra Paswan S/O Late Budhan Paswan R/O Village, P.O. And P.S. Riga, District Sitamarhi (Bihar), Working As Ex Senior Gateman, R.G. 19C, Suremanpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ANIL KUMAR SINHA

For the Respondent/s : Mr. AMAR NATH JHA

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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: 03-09-2015

Heard learned counsel for the Union of India and learned counsel for the contesting private respondent, and with their consent the writ petition is being disposed of at this stage itself.

2.This writ petition is directed against the judgment and order dated 14-2-2013 passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. No. 65 of 2010(Ram Chandra Paswan Vs. Union of India & others).



3. The private respondent Ram Chandra Paswan was Group-D employee in the Railways, and was posted as Gateman. A disciplinary proceeding for major penalty was initiated against him for having been in unauthorized absence from 12-1-2007 to 12-9-2007. Charges having been served upon him, the disciplinary proceedings were conducted, and upon the Enquiry Officer finding the charges established, he was noticed, and then the Disciplinary Authority passed orders for his removal from service, being order dated 5-1-2009. He unsuccessfully appealed against the said order, and then came to the Tribunal. Before the Tribunal, the defence was that he had been orally suspended. He then sent legal notice to the Assistant Engineer, which annoyed the authorities, and he was not allowed any work. He then moved the Tribunal, but his application was dismissed for want of jurisdiction, as at that time he was working and was posted at Suremanpur, Balia in the State of Uttar Pradesh. He was then noticed by the Railways to re-join his post, which he did after two months, whereafter disciplinary proceedings were initiated. He submitted that the action of the Railways was vindictive. The Tribunal could not find any infirmity in the procedural aspects of the disciplinary proceedings nor did the Tribunal find that the charges could not be proved. Yet, the Tribunal interfered, holding that the proceedings appear to be vindictive, and thus set aside the order of the

Disciplinary Authority and the Appellate Authority, directing reinstatement with full back wages, except for the period of his alleged absence. It is against this, that this writ petition has been filed by Union of India.

4. As we have noted above, the Tribunal has found no procedural infirmity in the disciplinary proceedings. The Tribunal also could not come to a finding that the charges were not established. In our view, these two having there, the order of the Disciplinary Authority could not be set aside by the Tribunal. The only exception then would be where the Tribunal finds that the punishment is shockingly disproportionate; even in that case, as has been held by the Apex Court repeatedly, the matter has to be remanded to the Disciplinary Authority.

5. Having considered the matter, in our view, considering that the workman had spent all his life in the Railway service, and towards the end of his career such a misfortune came upon him, it would be indeed too harsh a penalty to order for his removal from service, depriving him all his retiral and post retiral benefits. While we do not agree with the finding of the Tribunal that the proceedings against the petitioner were motivated, we do agree that it is a case where the punishment is grossly and shockingly disproportionate.

6. We would, thus, set aside the order of the Disciplinary

Authority in relation to the quantum of punishment, and remand the matter to the Disciplinary Authority, who may consider passing orders for compulsorily retiring the workman from the date of initial order of punishment, as passed by the Disciplinary Authority i.e., with effect from 5-1-2009, and further for the period the petitioner was absent, it would be treated as leave without pay.

7. We, accordingly, set aside the order of punishment, as passed by the Disciplinary Authority and affirmed by the Appellate Authority, as also the order in that relation passed by the Central Administrative Tribunal, Patna Bench, and remand the matter on the aspect of punishment, as indicated above, for fresh consideration before the Disciplinary Authority, who would pass fresh orders in view of our observation as above, after hearing the parties.

8. This writ application is, accordingly, disposed of.

(Navaniti Prasad Singh, J)

BK.Roy/-

(Nilu Agrawal, J)

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