

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9099 of 2014

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1. The Union of India through the General Manager, E.C. Railway, Hajipur
 2. The Chief Commercial Manager, E.C. Railway, Hajipur
 3. The Divisional Railway Manager, E.C. Railway Danapur
 4. The Senior Divisional Commercial Manager, E.C. Railway Danapur
 5. The Senior Divisional Personnel Officer, E.C. Railway, Danapur
 6. The Assistant Commercial Manager, E.C. Railway, Danapur

.... Petitioner/s

Versus

Umesh Chaudhary Son of Mahendra Chaudhary resident of Fare Field Colony near
Sharma Decorator, P.O. AND Police Station - Digha, District - Patna, at Present
Posted as Booking Supervisor, E.C. Railway, Jhajha

.... Respondent/s

WITH

Civil Writ Jurisdiction Case No 2181 of 2014

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1. The Union of India through the General Manager, E.C. Railway, Hajipur
 2. The Chief Commercial Manager, E.C. Railway, Hajipur
 3. The Divisional Railway Manager, E.C. Railway, Hajipur
 4. The Senior Divisional Commercial Manager, E.C. Railway, Hajipur
 5. The Senior Divisional Personnel Officer, Danapur
 6. The Assistant Commercial Manager, E.C. Railway, Danapur

.... Petitioner/s

Versus

Umesh Chaudhary Son of Mahendra Chaudhary Resident of Fare Field Colony near
Sharma Decorator, P.O. And Police Station- Digha, District- Patna, At Present
Posted As Booking Supervisor, E.C. Railway, Jhajha

.... Respondent/s

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For the Petitioner/s : M/s Bindhayanchal Singh & Ram Binod Singh, Advs

For the Respondent/s: M/s M P Dixit & Sanjay Kumar Chaubey, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-03-2015

Heard the parties and with their consent, these writ

petitions are being finally disposed of at this stage itself.

2 Before proceeding, we must note that enough confusion has been created before the Central Administrative Tribunal (In short, the Tribunal), thanks to both the parties and their ignorance to events taking place in the disciplinary proceedings.

3 CWJC No 9099 of 2014 has been filed challenging the order dated 16.12.2010 passed by the Tribunal in OA No 840 of 2010 allowing the prayer of the employee, applicant before the Tribunal, the reliefs in terms of paragraph 8.3 of the OA. CWJC No 2181 of 2014 has been filed by the Railways against the order dated 30.05.2013 passed by the Tribunal rejecting the prayer of the Railways both in MA No 259 of 2012 and RA No 6 of 2012 both arising out of OA No 840 of 2010.

4 Shri Umesh Chaudhary, at the relevant time, was Goods Supervisor at Fatuha Goods Shed of the East Central Railways. Allegedly, the said employee had wrongly delivered certain consignments of sugar for which a claim against Railways was made alleging wrongful and fraudulent delivery. Railway filed two criminal complaints against the person who took delivery and its employee putting the employee under suspension on 09.07.2010 pending departmental proceedings. On 20.07.2010, charges were framed and communicated to the employee and disciplinary proceedings were

started. On 22.09.2010, the employee filed before the Tribunal OA No 648 of 2010, inter alia, praying for stay of disciplinary proceedings till the criminal complainants are not decided. The Tribunal did not pass any interim order in the said OA. On 21.11.2010, an ex parte enquiry report was submitted in the disciplinary proceedings because inspite of repeated notices, the employee chose not to appear in the enquiry on the plea that OA No 648 of 2010 was pending before the Tribunal. On coming to know of the enquiry report having been submitted, the employee, on 10.12.2010, filed another OA being OA No 840 of 2010 before the Tribunal for quashing of the enquiry report on the ground that the enquiry report had been finalized and filed ex parte without reasonable opportunity being granted to the employee. There were stay applications pending in both OA No 648 and OA No 840 both of 2010. It appears both the said applications were then taken up by the Tribunal and separate orders were passed on 16.12.2010 by the Tribunal. In regard to OA No 648 of 2010, the Tribunal held the said OA itself to have become infructuous inasmuch as enquiry had been completed and enquiry report having been submitted. It, accordingly, refused to grant any stay and declared the OA as infructuous. Then an order, on the same day, is passed that is on 16.12.2010 in regard to the stay application which was pending in OA No 840 of 2010. Noticing

that the employee had not participated in the enquiry proceedings because of pendency of OA No 648 of 2010, the enquiry report was ex parte as against the employee and would cause him severe prejudice if the enquiry report is not set aside and matter remanded for rehearing, taking note of submission of counsel for the Railways, the Tribunal allowed OA No 840 of 2010 in terms of the relief prayed in paragraph 8.3 of the OA. Paragraphs-8.2 and 8.3 of the OA read as follows:

“8.2 That after quashing of the Order/Report dated 21.11.2010 communicated through Letter dated 23.11.2010, this Hon’ble Court may direct the respondents specially Respondents No 4 and 6 to await the decision of this Hon’ble Court in OA No 648/2010.

8.3 That if so required, the respondents may be directed to give the applicant opportunities to defend him in the Inquiry Proceeding.

5 Unseeingly, the Tribunal allowed the OA in terms of the prayer made in paragraphs 8.3 without noticing that unless prayer under paragraph 8.2 is allowed, paragraph 8.3 would be meaningless.

6 Once this order was passed on 16.12.2010, the employee communicated this order to all concerned immediately. He alleges there was no response. Thereafter, almost a year later, Railways filed a review application before the Tribunal. This



application was filed on 29.09.2011 praying that in fact on 14/15th of December 2010 itself, pursuant to the enquiry report submitted, final orders dismissing the employee from service had been passed. This was not brought to the notice of the Tribunal by the employee and, as such, the order passed on 16.12.2010 be recalled. Similarly, a miscellaneous application was also filed. The employee filed a contempt application also. The Tribunal refused to review its earlier order which has given rise to one of the writ petitions and against the substantive order passed on 16.12.2010 being the first writ petition by the Railways.

7 On behalf of Railways, it is submitted that when the Tribunal passed orders on 16.12.2010, final order of dismissal had already been passed on 14/15.12.2010 and the employee not having challenged the same, both his OAs have become infructuous. On the other hand, on behalf of the employee who is the sole respondent in both their petitions, it is submitted that when both the OAs were taken up for consideration of stay and disposal on 16.12.2010 by the Tribunal. No one on behalf of the Railways pointed out that order of dismissal that is order concluding the departmental proceedings being the final order had been passed on 14/15.12.2010. The order having been passed hardly 24 hours earlier, how could the employee know of it because it was never communicated to the employee immediately



nor even thereafter and the employee actually came to know of it only for the first time when the review application was filed almost a year later by the Railways. How was the employee required to bring this to the notice of the Tribunal when it had not been disclosed to any body. It is further suggested that in fact the order has been manipulated to be shown to have been passed prior to orders of the Tribunal. The order and the letter allegedly trying to communicate the same, as appended by the Railways in the writ petition itself, has been shown to the Court. The order is signed on 15.12.2010 whereas the letter of communication of the said order is drawn up and signed on 14.12.2010. All we may say is indeed this conduct raises grave suspicion but that do not detain us for the reasons, we note hereunder.

8 From the facts aforesaid, it would be seen that first the departmental proceeding was tried to be stayed by filing OA No 648 of 2010 but then having come to know of the ex parte enquiry report, OA No 840 of 2010 was filed. As noted above, the relief sought for was indicated in paragraphs 8.2 and 8.3, inter alia, to set aside the enquiry report which is ex parte and direct for enquiry to be held afresh. The Tribunal fell in the trap of suggestion of the counsel for the Railways and allowed in terms of prayer of paragraph 8.3 whereas 8.3 was dependent upon relief as sought for in paragraph 8.2. If we read the intent of the order of the Tribunal, it is clear. The



Tribunal has noted that the employee genuinely avoided the enquiry proceedings because of pendency of OA No 648 of 2010. The Tribunal noted that proceeding ex parte in such a serious matter was causing serious prejudice to the employee. The Tribunal had noted that the enquiry report was ex parte and it is quashing of the enquiry report that the employee had sought in OA 840 of 2010. On these facts, the Tribunal ordered that the enquiry must be held after hearing the employee. To us, it is clear that the order of the Tribunal is not at all happily worded but the intent of the Tribunal was clear. The intent was to set aside the enquiry report for a fresh hearing with the employee participating. If that be so whether ultimately disciplinary order was passed or not would be of no consequence because for a disciplinary proceeding, an enquiry report is a foundation report. If the foundation is itself found to be defective and is set aside, the superstructure thereon must also collapse consequentially.

9 Now we come to the submission of the learned counsel for the Railways that final order has been passed in the disciplinary proceeding imposing punishment of dismissal and that not having been challenged, the orders passed by the Tribunal are to be set aside. Learned counsel for the Railways is partially correct but when we look into the facts closely, that is not the situation. Theoretically, if during pendency of proceeding, a final order is



passed other than any relief sought at the intermediate level, would have to be moved challenging the final order as well and in absence of challenge of the final order, the proceedings would lapse as infructuous but in this case, the order passed by the Tribunal is 16.12.2010 and the order of the disciplinary proceeding being final regarding removal from service is 15.12.2010. None of the parties were aware of it. None of the parties brought it to the notice of the Tribunal. Had the Railways brought it to the notice of the Tribunal, the Railways itself had issued the order, in view of the enquiry report being set aside, the Tribunal would have immediately set aside the final order as well. The employee surely did not know of this order because it had not been communicated to him at all. It is only when the review application and the miscellaneous application were filed by the Railways that this final order was mentioned which applications were filed almost a year later.

10 Be that as it may, noticing the turn of events and the orders passed and hearing the parties at length, we are of the view that in order to do complete justice amongst the parties and not to play on technicalities much less hyper technicalities, it would be in the interest of justice to remand the matter to the disciplinary authority to start from enquiry stage. The inevitable consequence would be that the final order of dismissal would stand vacated. What we are



conscious by what we are doing, the Railways ought not to complain because the only thing we are insisting is as the Tribunal itself had noted that serious prejudice had been caused to the employee by the ex parte enquiry all we are requiring Railways is give the employee a fair opportunity to defend and then proceed in accordance with law. Railway is State within the meaning of Article 12 of the Constitution and bound by Article 14 of the Constitution. It must do what is just and fair and not rely upon technicalities to defeat the legitimate claims of the citizen-employee.

11 We may just note one thing that the employee has not made any grievance with regard to his OA No 648 of 2010 being disposed of as infructuous. He will not be permitted to raise that plea again at any stage.

12 Accordingly, both these writ petitions are disposed of by setting aside the orders of the Tribunal and remanding the matter to the stage of disciplinary proceedings as before the Enquiry Officer. It would be for the employee to participate and ensure expeditious disposal of the disciplinary proceedings. Any effort on behalf of the employee to unduly delay the proceedings, the Enquiry Officer and/or the disciplinary authority would be at liberty to proceed ex parte and it would be the employee who would be responsible for this predicament this time.

13 It is expected that within three months, the enquiry proceedings would be concluded and the disciplinary proceedings would be concluded as expeditiously as possible thereafter.

14 The two writ petitions are, accordingly, disposed of.

15 In the special facts and circumstances as noted above, as removal order had already been passed which has effectively been set aside, till conclusion of the fresh disciplinary proceeding, the employee will not be entitled to raise any claim for either reinstatement or for back wages which will both be dependent upon the final conclusion of the disciplinary proceeding. The employee would be deemed to be continuing under suspension.

(Navaniti Prasad Singh, J)

M.E.H./-

(Jitendra Mohan Sharma, J)

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