

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19477 of 2014

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Ramesh Chandra Prasad, aged aout 64 years, Son of Late Govind Prasad, Resident of Village - Sherghati, P.O. - Sherghati, P.S. - Sherghati, District - Gaya.

.... Petitioner/s

Versus

1. Union of India through the Chief Personnel Officer, East Central Railway, Hajipur.
2. The Divisional Railway Manager, East Central Railway, Dhanbad.
3. The Additional Divisional Railway Manager, East Central Railway, Dhanbad.
4. The Sr. Divisional Personal Officer, East Central Railway, Dhanbad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Jha, Advocate.

For the Respondent/s : Mr. D. K. Sinha, Sr. Advocate
Mr. Satyendra Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Dated: 22nd April, 2016

Heard learned counsel for the parties.

The present writ application has been filed by the petitioner for quashing of order dated 19th November, 2013 passed in O.A. No. 156 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') by which the Original Application was dismissed.

The petitioner was appointed as Sub-Assistant Teacher in the Railway and joined at Patrattu on 22.08.1973 and upon being empanelled as a Trained Graduate Teacher, he was transferred on promotion to Middle School, Barwadih where he



joined on 07.07.1987. Subsequently, he was asked to officiate as In-charge of the school since November, 1997. On 20.12.2005, an Inspection Team consisting of Mr. E. Tigga, A.P.O (4)/D.H.N. and Mr. Anup Kumar, Personnel/Welfare Inspector visited the school for inspection where the petitioner is alleged to have misbehaved with them. The petitioner was thus placed under suspension by order dated 12.05.2006 and issued a major penalty chargesheet under O.M. dated 14.07.2006. The charges were that he misbehaved with the members of the team during inspection and that he did not look after the work of the school properly and further that some teachers and students had also complained verbally to the APO (4)/D.H.N. that the petitioner always used to misbehave with them as well as visitors and also that the Inspection Team found that the records and sanitation were not maintained properly in the school. The suspension was revoked by order dated 19.09.2006. The petitioner submitted his reply to the Sr. D.P.O. denying the charges. The Enquiry Officer submitted his report with the finding that the charges were proved. On the basis of the said enquiry report, the Sr. D.P.O., E.C. Railway, Dhanbad passed order dated 22.07.2008 imposing penalty of compulsory retirement on the petitioner. The same was challenged before the Tribunal in O.A. No. 156 of 2010.

Learned counsel for the petitioner has submitted that the enquiry report submitted by an officer who was of the same rank as petitioner is vitiated in law and cannot be relied upon. He further submitted that the charges were vague as no details were



given of the misbehaviour alleged or with regard to the complaint made by any teacher, student or guardian. He submitted that the complaint register in the school does not disclose any such complaint. It was further submitted that even with regard to the charge that the records were not maintained properly and there was an environment of indiscipline and unrest, no specific allegations were levelled. Learned counsel submitted that the charge of misbehaviour with Mr. Tigga was not proved during enquiry as he was not made a witness and that a teacher Mr. Dhananjay Kumar, who was made witness was on leave on the date of inspection i.e., 20.12.2005. He submitted that the procedure of the enquiry is also vitiated as neither proper opportunity nor relevant documents were provided to him even upon being asked and further that he was not given any opportunity to cross-examine the witnesses. The last point canvassed by learned counsel was that the officer who has imposed the major punishment on the petitioner is incompetent as he is junior to the Additional Divisional Railway Manager, E.C., Railway, Dhanbad who could have imposed such major penalty whereas the punishment order has been passed by a lower authority.

Learned counsel for the respondents submitted that the points and issues raised by the petitioner have been discussed in detail by the Tribunal in its order which is impugned and the same are well reasoned and discussed and therefore require no interference.



Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court does not find any merit in the arguments of learned counsel for the petitioner. Perusal of the order impugned discloses that there is specific finding on each and every point raised by the petitioner before the Tribunal as well as before this Court. At this juncture, it would be relevant to take note of the major issues dealt by the Tribunal. As per the findings, the Enquiry Officer has been found to be in a higher pay scale as compared to the petitioner. The petitioner participated in the enquiry proceeding with his Defence Helper who also examined the witnesses and there was nothing in the proceedings of the enquiry, which were signed by the applicant, to indicate that he had raised the issue of non supply of documents listed in the chargesheet. Such objection was not taken even in the reply to the chargesheet filed by the petitioner on 16.08.2006 in which, to the contrary, it is mentioned that he did not desire to inspect any document for preparation of his defence. As far as Mr. Tigga not being made a witness, it has been explained that other two witnesses who were examined were present at the time of incident and thus were eye witnesses. It has been noted that the petitioner had not requested for Mr. Tigga to be called as witness during the course of enquiry. With regard to the vagueness of the charges, the finding is that no such plea was taken and simply the allegations were denied and moreover that details regarding how he misbehaved have been mentioned by witness and also stated in the



enquiry report and how he did not look after the school properly has also been discussed in the report of the Enquiry Officer. It has also been noted that the witnesses had stated with regard to the petitioner's misbehaviour with students and other teachers. The Tribunal has noted that the plea of the petitioner that the witness Mr. Dhananjay Kumar was on leave and, thus, could not be a witness did not merit consideration for the reason that he has stated before the Enquiry Officer that he, along with some other teachers, had come to meet the inspection team to raise some of his grievances and thus his presence at the relevant time has been satisfactorily explained. The Tribunal has also referred to para (IX) Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968 to indicate that the Sr. D.P.O., being the Appointing Authority, was competent to pass an order imposing major penalty of compulsory retirement from service in the case of the petitioner. The Tribunal has further noted that the order of punishment was passed in July, 2008 and the Original Application was filed after more than one and a half years, which was beyond the period of limitation. It has further been observed that by the time the Original Application was filed, the petitioner had already attained the age of 59 years and, thus, had clearly crossed the age of superannuation on the day the case was being decided, as a result of which, his prayer for reinstatement has become infructuous. The Tribunal has also observed that in any case, the petitioner had applied for voluntary retirement and the order against him is of compulsory

retirement with full pensionary benefits which was accepted by him without any protest. Such findings in the order impugned have not been assailed to be contrary to the records or erroneous by the petitioner in the present writ application. Further, the reasoning given by the Tribunal, in the considered opinion of this Court, is well founded. The law being settled that judicial review with regard to orders passed in departmental proceedings is limited to procedural defects, lack of jurisdiction/competence of the authority who has passed the order, violation of constitutional/statutory provisions and/or the punishment being disproportionate so as to shock the conscience of the Court and in the present case no such defect having been brought to our notice, either on facts or in law, we find no ground to interfere in the order impugned.

For the reasons aforesaid, the writ petition being devoid of merit, stands dismissed.

(Ahsanuddin Amanullah, J.)

(Hemant Gupta, J.) I agree

(Hemant Gupta, J.)

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