

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20439 of 2014

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Ramashish S/o Late Dwarika, Resident of Village and P.O. - Kanhaipur, P.S. - Mokamah, District- Patna.

.... Petitioner/s

Versus

1. The Union of India through the Chairman, Railway Board, Ministry of Rail, Rail Bhavan New Delhi.
2. The Zonal Manager, East Central Railway Zonal Office, Hajipur.
3. The Divisional Railway Manager, Danapur Division, Danapur.
4. The Additional Divisional Railway Manager, Danapur Division, Danapur.
5. Senior Divisional Engineer (2), East Central Railway Danapur Division, Danapur.
6. The Assistant Engineer, Mokamah.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Chandra Shekhar Singh, Advocate

For the Respondents : Mr. Bijoy Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-06-2016

The challenge in the present writ petition is to an order dated 8th August, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (in short 'Tribunal'), whereby an Original Application filed by applicant, has remained unsuccessful.

The petitioner was posted as Patrolman at Mokama on 1st January, 2006 when a Train No. 2501 UP derailed. A charge sheet was issued to the Petitioner on 25th January, 2006 on the allegation of negligence in duty resulting into such accident. After conduct of enquiry proceeding, an order of punishment was passed on 10th May, 2006. In an appeal preferred against the said order of punishment, the Senior Divisional



Engineer, vide order dated 9th May, 2007, substituted the punishment to lower his pay by three stages for three years with cumulative effect. The petitioner preferred revision petition against the order of the Senior Divisional Engineer which was dismissed on 30th September, 2009. Still aggrieved, the petitioner invoked the jurisdiction of the Tribunal which application has remained unsuccessful.

The prime argument of the petitioner is that, in fact, the disciplinary authority was also found negligent in duty resulting into an accident; therefore, he could not act as a disciplinary authority. To rebut such an argument, the respondents submitted their response by producing a letter dated 20th May, 2016 on record of this Court, wherein, an enquiry report of accident of safety branch was also enclosed. As per the said report, the Assistant Engineer, Mokama, the disciplinary authority, has been held to be secondary responsible for poor maintenance of track in his jurisdiction, but he was not involved in the act of non-protection of track after detection of fracture of Rail track. It has also been disclosed that the appellate authority reduced the punishment of stoppage of three stages below with cumulative effect and that the appellate authority was not involved/party to this case at any level. The revisional authority upheld the order of the appellate authority. It was also mentioned that the revisional authority was in no way party/ involved in the case.

When the matter came up for hearing before this Court on 20th June, 2016, the petitioner sought time to examine as to whether the order of punishment passed by the disciplinary authority has caused any

prejudice to the Petitioner.

Today, learned counsel for the petitioner has vehemently argued that the mere fact that the disciplinary authority was also responsible in some manner in the accident, therefore, the very foundation of the order of punishment is not sustainable. Consequently, the order passed by the appellate authority or the revisional authority will not cure the basic defect. It is argued that the appellate authority has passed a non speaking order, therefore, it does not meet the principles of natural justice.

We have heard learned counsel for the parties and find no merit in the present petition. In the report submitted by the officers of the Safety Branch, the disciplinary authority, namely, Mr. P.K. Chandra was said to be secondary responsible as it was observed that he was aware of the condition of the railway track not being proper. The said report of the three members committee came to light on 27th January, 2006 whereas the petitioner was charge sheeted on 25th January, 2006. Obviously, the said report is, thus, not the basis of the enquiry initiated against the petitioner. Such report shows that it was departmental fact finding committee who has given such report.

A communication dated 20th May, 2016, produced by the learned counsel for the respondents, is not indicative of the fact that any disciplinary proceeding was initiated against Mr. P. K. Chandra. Even assuming such report was made basis of initiation of any departmental proceeding against the Petitioner, but that will not affect the order of punishment passed against the petitioner inasmuch as not only the appellate

authority reduced the punishment, but the revisional authority has given detailed reasons to uphold the punishment. Thus, there is no prejudice suffered by the petitioner when the disciplinary authority took a final decision of concluding the disciplinary proceeding against the petitioner. The appellate authority reduced the punishment. The appellate authority has granted indulgence to the appellant. The order of punishment passed by the disciplinary authority loses sting, when the order of removal is substituted by reduction of pay by the appellate authority. The revisional authority has maintained the order of punishment. Therefore, in the absence of any proof of prejudice, we do not find that the petitioner is entitled to any indulgence in the writ jurisdiction of this Court.

The writ petition is thus dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	N/A
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