

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11747 of 2012

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Digvijay Narayan Singh, Son of Sri Mahusudan Singh, Resident of Village - Malalpura, P.S. - Pura, District - Muzaffarpur (Bihar). At present residing at Quarter No. F/221/A, Litchi Bagan, Railway Colony, Manipur, Muzaffarpur (Bihar)

.... Petitioner

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur
2. The General Manager (Personnel), East Central Railway, Hajipur
3. The Divisional Railway Manager, East Central Railway, Hajipur
4. The Additional Divisional Railway Manager, East Central Railway (Appellate Authority), Sonapur
5. Senior Divisional Engineer (the then Disciplinary Authority), East Central Railway, Hajipur
6. Senior Divisional Engineer/Co-Ordination East Central Railway, Sonapur
7. Senior Divisional Personnel Officer, Sonapur
8. The Assistant Divisional Engineer (South), Muzaffarpur
9. The Senior Section Engineer, Works/Line, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Gautam Bose, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate

For the Respondents : Mr. D.K. Sinha, Sr. Advocate
Mr. Abhinay Raj, Advocate

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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: 11-04-2016

Heard Sri Gautam Bose, learned Senior Counsel
in support of the writ petition and Sri D.K. Sinha, learned Senior
Counsel for the Railways.

This writ petition is directed against the order of
the Central Administrative Tribunal, Patna Bench, Patna dated



09.09.2010, passed in O.A. No. 338 of 2006, by which the writ petitioner's application before the Tribunal has been dismissed, thus, affirming the order of punishment of compulsory retirement as passed by the Disciplinary Authority vide its order dated 27.09.2005 and which was not interfered with in appeal by the Additional Divisional Railway Manager, Sonapur by his order dated 10.03.2006.

Sri Gautam Bose, learned Senior Counsel appearing in support of the writ petition submits that both the appellant authority and the Tribunal failed to consider the case of the writ petitioner and decide the matter in accordance with law. He further submits that along with the charge memo certain documents were referred to but not supplied, more appropriately they were Relied Upon Document (RUD) 3, 4, 5 and 6. Petitioner has repeatedly been asking for the same but he was denied the same. This vitiated the orders.

On behalf of the Railways, it is submitted that the petitioner had full opportunity to defend himself and no prejudice could be shown by him in this regard. It has further been submitted that the Appellate Authority and the Tribunal considered the matter and it requires no consideration by this Court.

We may first deal with the question of non-supply of document. If we refer to Annexure-10 to the writ petition, which is



the statement submitted in defence by the petitioner on conclusion of enquiry report he has clearly culled out the true allegations against him (i) not maintaining proper accounts and (ii) shortage in the accounts of cement and M.S. rods. At several places in his defence statement he has referred to denial of RUD 3 to 6. He has specifically stated that when he demanded those documents he was replied and the letter is annexed that those documents are not available with the Railways, inasmuch as, they have been seized by the CBI and is pending with the CBI, he may inspect there, but in spite of request no authorization to inspect those documents was issued by the Railways. Some virtually illegible photo copies of some part of those documents were given, which were of no help. Thus, it stands established that there were certain documents which were relied upon by the Railways and the Enquiry Officer, which were never made available to the petitioner in spite of repeated request.

We may also note that the CBI conducted raid on or about 20.06.1996 and godown verifications were done for 3 days. CBI then registered a preliminary enquiry case after 4 years on 21.05.2000, but never thereafter followed it up by a F.I.R., rather in the year 2001 they wrote to the Railways to take appropriate disciplinary action against the Chief Inspector of Works and the petitioner and left the matter at that stage.

At this stage, we may note one other aspect.

Petitioner was on leave. He was Head Clerk of Stores and Establishment Department and other godowns under the Chief Inspector of Works. CBI on coming to know of certain irregularities being committed, conducted a raid for verification of various godowns of Railways at Sonapur. Petitioner being absent, he was called and verifications were done by the CBI. After its own internal enquiry, the CBI did not proceed to institute any criminal case. It merely recommended that departmental proceeding may be taken up. Result was that there was no prosecution of the petitioner.

In the defence statement, petitioner has repeatedly referred to various explanations given in regard to alleged shortage of cement and steel. He has submitted that certain stock of cement did not appear to have been taken into account. He has given facts and figures in relation thereto in detail. Insofar as steel is concerned, he mentioned that steel rod was not physically weighed. All that was done was the total length calculated and it was multiplied by 5.5 kgs., meaning thereby that each meter of steel rods weighed 5.5 kgs. and thus shortage and excess was calculated. This was wrong, inasmuch as, the weight of steel rods rod was different from what they had been taken. The actual weight was 6.31 kgs per meter. If that is taken into account, there would be hardly any shortage of steel. Various



evidences were discussed in his representations. Some of them was to show that in his long absence prior to the inspection by CBI, the keys being with him, the Railways used to said representatives to collect the keys and godowns were opened and deliveries were made, which naturally, in absence of the petitioner, could not be entered in the accounts. What was delivered was also not known to the petitioner, as he was absent, then to allege shortage was not proper. The Disciplinary Authority rejected all this, passed orders for compulsory retirement. The petitioner filed appeal. There was considerable delay and it was after intervention of the Tribunal that ultimately the order was passed by the Appellate Authority on 10.03.2006 (Annexure-16). We have gone through the said order of the Appellate Authority i.e. Additional Divisional Railway Manager, Sonapur. To say the least, it is an apology of an order. It is one and half page order and the substance is that having seen the records the Appellate Authority is of the view that the Disciplinary Authority having considered the matter has passed speaking order and he must have passed the order after considering the facts in detail. What happened to the various contentions that the petitioner raised in appeal, is not at all considered. On this presumption and assumption, as noted above, the appeal was dismissed. This is why we have said that this is an apology for an order. It was the first appeal from a disciplinary proceeding in which



major penalty of compulsory retirement has been passed. It could not have been an order in appeal in such a casual manner. The Appellate Authority first, required as the first court of fact, to deal with the matter in appeal. It has to deal with the issues raised in the memorandum of appeal. Even if he is satisfied with the Disciplinary Authority, it is only when the Appellate Authority applies its mind and deals with the issues that orders are to be passed by him. In revision, the revisional authority or in a writ proceeding, this Court can look into and decide whether there has been a proper adjudication. We are afraid that the order of the Appellate Authority does not disclose any adjudication. It is virtually saying that the Disciplinary Authority has considered every aspect of the matter and must have looked into the facts and circumstances before coming to the conclusion, therefore, the Appellate Authority would not interfere. This, in our view, is not an issue that has been vested with the Appellate Authority for the reasons aforesaid.

Now, when we come to the Tribunal, it is the same story. The Tribunal in its lengthy order has taken note of all possible arguments that could be raised or that were raised on behalf of the petitioner, but it does not come to any finding in regard to any of the issues raised by the petitioner. In the end, all it says, is that the procedural requirements have been met. The petitioner has not been



able to dislodge the allegations made in the disciplinary proceedings. There are no major legal issues to be decided and thus there is little scope for judicial interference by the Tribunal, which is very limited. The Tribunal is not supposed to weigh the evidence as against the quantum of punishment. We are again sorry for the Tribunal. The Tribunal is the last court of facts and it is its duty to analyze the issues of facts and law both. Its jurisdiction is much wider than of judicial review as vested in this Court. This Court in exercise of writ jurisdiction has limited scope for judicial review. It has to see that the procedural requirements have been met. It does not sit in appeal but it is very much different for the Tribunal, which is the last court of facts. It has to go into the questions of fact as raised by an applicant before it. It has to adjudicate upon that.

Thus, we find that neither the Appellate Authority nor the Tribunal has taken note of the facts as raised by the writ petitioner. That being so, neither the order of the Tribunal nor the order of the Appellate Authority can be sustained. Both are set aside and the matter is remanded to the Appellate Authority to be decided afresh after hearing the parties. As the matter is quite old, it is expected that the petitioner and the Railways shall cooperate with the matter before the Appellate Authority, who would proceed and make efforts to dispose of the matter within six months from today. The fate

of punishment of the petitioner would be dependent upon the order that may be passed by the Appellate Authority. The Appellate Authority would also consider whether the punishment, as imposed by the Disciplinary Authority, was, in the facts and circumstances, excessive, keeping in view the fact that the other person charged along with the petitioner being the Chief Inspector of Works (CIOW) was let off with a very minor punishment.

With these observations, the writ petition stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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