

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17003 of 2014

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Gajendra Kumar Singh, son of Sri Ramjanam Singh, resident of Village-Ramgarh,
P.O.- Mirchaiganj, District-Nalanda.

.... Petitioner

Versus

1. The Union of India through General Manager, Central Railway, CST Mumbai.
2. The Assistant Divisional Railway Manager, Central Railway, Nagapur.
3. The Senior Divisional Engineer (South), Central Railway, Nagpur.
4. The Assistant Divisional Engineer, Central Railway Vardha, Nagpur.
5. The Senior Section Engineer, Pulgaon, Central Railway Vardha, Nagpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Anil Kumar Upadhaya, Advocate
Mr. Sanjay Kumar, Advocate

For the Respondents : Mr. Anil Singh, 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: 28-04-2016

The challenge in the present writ application is to an order dated 27th of November, 2013 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') whereby the challenge to the order of removal from service of the petitioner remained unsuccessful.

2. The petitioner was on duty on 03.04.2008. One Rajesh Kumhare was posted as a Permanent Way Supervisor on that day.



The stand of the writ petitioner in the writ application is that Rajesh Kumhare started abusing and beating the petitioner as a result of which, the petitioner got head injury. In order to save himself, the petitioner changed his position as a result of which Rajesh Kumhare lost his balance and fell down as a result of which his leg was fractured.

3. On the basis of a complaint lodged by Rajesh Kumhare, a charge-sheet dated 19.04.2008 was served upon the petitioner. The petitioner filed his reply, but finding the reply unsatisfactory, the enquiry officer was appointed. Sri Rajesh Kumhare appeared as P.W.5 in enquiry proceedings. The enquiry officer submitted his report dated 16.12.2009 and found the charges proved against the petitioner of assaulting Rajesh Kumhare and causing fracture of leg. On the basis of the report of the enquiry officer, second show cause notice was served upon the petitioner and after considering the reply filed by the petitioner, the disciplinary authority passed an order on 25th of August, 2010 imposing punishment of removal from service. The petitioner filed an appeal which was dismissed on 29th of October, 2010. The further revision stands dismissed on 15th February, 2011.

4. Thereafter, the petitioner filed an Original Application under Section 19 of the Administrative Tribunal Act, 1985 which has been dismissed by the order impugned in the writ application.



5. Learned counsel for the petitioner vehemently argued that the enquiry report is cryptic, non-speaking and it is on the basis of such enquiry report, the disciplinary authority has passed an order. Again by virtue of a non-speaking and cryptic order, even the appeal and the revision have been dismissed thus, it is argued that principles of natural justice stands violated when the detailed reasons have not been recorded by any of the disciplinary authorities. It is also argued that though Rajesh Kumhare is said to have received injuries of fracture of leg, but no criminal case was instituted which belies the stand of the Department. It is also argued that punishment imposed is disproportionate to the misconduct alleged against the petitioner.

6. We have heard learned counsel for the parties and find no merit in the writ application. The learned Tribunal has recorded a categorical finding that the petitioner admitted that leg of Rajesh Kumhare was fractured due to fight between him and his supervisor.

Relevant extract of the order of the Tribunal read as under:-

“ 3(ii) The respondents have denied the applicant’s claim that there was no evidence and that the prosecution witnesses had not supported the case of the administration. The respondents have also referred to the applicant’s own statement before the Inquiry Officer. In this statement, in reply to question no.6, he had admitted that he had not brought his all tools along with him on duty. Further, in answer no.13, he admitted that he had abused his supervisor. In answer to question no.14, he further admitted that the leg of his supervisor was fractured due to fighting between him and his supervisor.”



7. The enquiry officer has given his report which is on record as Annexure-5. After referring to the various documents, the enquiry officer has found that Rajesh Kumhare was admitted in Railway Hospital, at Nagpur by Sri Ram Champat and Ramdas Vaman. Thus, the enquiry officer concluded that there was a fight between the petitioner and Rajesh Kumhare which was unbecoming conduct of the petitioner. On the basis of such report, the disciplinary authority passed order on 25th of August, 2010. The order is categorical that the petitioner has assaulted the Supervisor so badly which led to fracture of his leg. Maybe, the order is short, but it cannot be said to be non-speaking order. The reason and the basis have been clearly mentioned by the disciplinary authority. Such order has been affirmed in appeal and the revision as well.

8. We do not find that any of the order is a non-speaking or cryptic order. It may not be as detailed as a judgment by a Civil Court, but the order gives the basis of passing the order of punishment. It is what is required when it is said that the disciplinary authority is required to pass a speaking order. It cannot be said that the order passed by the disciplinary authority is not a speaking order. The order passed by the appellate authority is that of the affirmance of the order of the disciplinary authority, whereas the revisional authority has given detailed reasons, including the fact that the petitioner has man-

handled his superior officer causing fracture below the knee at two places leading to his unconsciousness. The requirement to give reasons has been discussed by the Supreme Court in **Oriental Bank of Commerce v. R.K. Uppal, (2011) 8 SCC 695**, where the Court said to the following effect:-

“27. The High Court has faulted the order of the appellate authority also on the ground of it being a non-speaking order. Is it so? We have carefully perused the order of the appellate authority and we find that the order dated 4-6-2004 cannot be labelled as a non-speaking order. The order does not suffer from the vice of non-application of mind. The appellate authority has addressed the points raised in the appeal and critical to the decision, albeit briefly. It is true that the appellate authority must record reasons in support of its order to indicate that it has applied its mind to the grounds raised but it is not the requirement of law that an order of affirmance by the appellate authority must be elaborate and extensive. Brief reasons which indicate due application of mind in the decision-making process may suffice”.

9. Thus, we do not find that the order passed by the disciplinary authorities suffer from any illegality or irregularity. The learned Tribunal has examined the entire evidence in proper perspective to return a finding that the misconduct has been established on the basis of outcome of the violent incident which took place on 08.04.2008 and that the petitioner has been rightly removed from service.

10. We do not find any error in the findings recorded by the Tribunal which may warrant interference in the present writ application. The same is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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