

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15557 of 2016

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1. The Union of India through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
 2. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
 3. Executive Director/Traffic, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
 4. The General Manager, North Central Railway, Allahabad (U.P.)
 5. The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
 6. The Financial Advisor and Chief Accounts Officer, North Central Railway, Subedarganj, Allahabad (U.P.)
 7. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur.
 8. Chief Vigilance Officer cum Senior Deputy General Manager, East Central Railway, Hajipur.

.... Petitioners

Versus

Smt. Pushpa Rani, Deputy General Manager/Law Office of the General Manager/Law, East Central Railway, 5th Floor, Biscomaun Tower, Patna-800001 (Bihar).

.... Respondent

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Appearance :

For the Petitioners : Mr. P.K. Verma, Sr. Advocate
Mr. Naresh Dikshit, Advocate
For the Respondent : Mr. Abhinav Srivastav, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 24-07-2017

Heard Sri P.K. Verma, learned Senior counsel for the petitioners and Sri Abhinav Srivastav, learned counsel for the respondent.

2. The Union of India through the Chairman, Railway Board, Ministry of Railway and its authorities have filed the present writ application for setting aside the order dated 11.09.2015 passed by learned Central



Administrative Tribunal (hereafter referred to as the 'Tribunal'), Patna Bench, Patna in Original Application (in short the 'O.A.') No. 246/2014, by which the learned Tribunal has been pleased to set aside the order dated 26.06.2013 passed by the disciplinary authority imposing a minor punishment of reduction of one stage in time scale of pay for a period of one month without cumulative effect upon the applicant-respondent no. 1.

3. The brief facts of the case, as appearing from the pleadings of the parties, are as under: -

Respondent no. 1 while working as Deputy FA and CAO in East Central Railway, Hajipur was served with a memorandum of charges dated 05.06.2012. The charges against applicant-respondent no. 1 are quoted hereunder:-

*"During a Preventive Check conducted by Railway Board Vigilance team in Train no. 2309, Patna Rajdhani Express on 18.10.2007 between ALJN-NDLS, the following irregularities were detected:-
During the check in H-I Coach in Coupe "C" of the said train, Smt. Pushpa Rani, the then Dy. FA&CAO[F&B]/ECR was found traveling on upper berth on the authority of 1st Class 'A' card pass bearing No. 2543 issued by GM [Personnel]/ECR. She was also having a ticket in 2AC on the strength of a Bronze Pass No. 008 and allotted two berths through EQ, which shows carelessness on the part of Smt. Pushpa*



Rani, the then Dy. FA&CAO.

Hence Smt. Pushpa Rani failed to bring on the notice of pass issuing authority by herself. Secondly, she was found using two different traveling authorities at same time.

Thus the said Smt. Pushpa Rani, the then Dy. FA&CAO/ECR by her act of omission & commission failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant thereby contravened the provisions of Rule 3.1(i) and (iii) of Railway Services Conduct Rules, 1966."

By serving the memorandum of charges as aforesaid, a proceeding under Rule 11 of the Railway Servant (Discipline & Appeal) Rules, 1968, was initiated against respondent no. 1.

4. A reply was filed by respondent no. 1 to the memo of charges, however a minor punishment of reduction of one stage in time scale for one month without cumulative effect was imposed upon her vide order dated 26.06.2013 passed by the Disciplinary Authority. This led to filing of O.A. No. 246/2014 in which impugned order has been passed by learned Tribunal.

**Stand of the Applicant before the
Disciplinary Authority and in O.A.**

5. The applicant-respondent no. 1 defended the charges and assailed the order dated 26.06.2013 passed



by the disciplinary authority in same vehemence as according to her a preliminary inquiry conducted by Sri Ravi Chaturvedi, Joint Director/Director, Vigilance, revealed that the charges were baseless and hence the respondent no. 1 was exonerated. The said preliminary inquiry report was said to have been accepted by the competent authority. Further, the applicant-respondent no. 1 in her detailed reply denied the allegations stating that the very joint note on the basis of which the inquiry was initiated was worthless as the Member of Legislative Assembly, Sri Vijayendra Kumar Yadav, who was traveling in Coupe 'C' on 18.10.2007 and whose signature has been shown on the joint note prepared by Vigilance team had denied his signature. In fact, it is not in dispute that Sri Vijayendra Kumar Yadav, MLA, vide his letter dated 21.07.2009 (Annexure A/6 to the O.A.) had categorically stated that he had never signed on any joint report alleged to have been made on 18.10.2007. The MLA had in fact stated that his signature appears to have been forged on the joint note. Despite repeated letter written by the Vigilance Department, the MLA did not change his stand and confirmed that his assertion in the letter dated 21.07.2009 is true and correct. According to applicant-respondent no. 1, there was no proof of her indulgence in the episode, as alleged, further



she submitted that the framing of charge at this stage after a lapse of about four years and seven months was not justified.

6. While assailing the order of minor punishment the applicant-respondent no. 1 submitted that the disciplinary authority himself stated in paragraph-3 that there was no report and also no documentary evidence to prove conclusively that the same card was used by applicant-respondent no. 1 for reservation in 1st AC except version of signatories of joint note of 18.10.2007. Applicant-respondent no. 1 also submitted that the disciplinary authority even though exonerated her from the main charge leveled against her, i.e., using two different traveling authorities (Metal Pass No. 008 and Card Pass No. 2543), he held her liable for not surrendering the card pass in time and also for having wrong endorsement on traveling entitlement which were never alleged in the article of charges. According to respondent no. 1 she got an information from the Public Information Officer under the Right to Information Act, 2005, that there is a provision of deposit continuing check pass after its use but none of the employee till date has deposited the same and only after completion of duty on work pass, the same is deposited in the office. The whole submission of applicant-respondent no. 1 was



that the order of the disciplinary authority was not based on any evidence and the charges was leveled after more than 4½ years from the alleged date of incident, hence the order of punishment dated 26.06.2013, by which a penalty of reduction of one stage in time scale of pay for a period of one month, imposed upon respondent no. 1 is liable to be quashed.

Stand of the Railway (Respondent before the Tribunal.

7. Before the Tribunal, learned counsel for the Railway submitted that the power of judicial review of a Tribunal is very limited and the Tribunal does not act as an appellate authority re re-appreciate the evidence so as to arrive on its own independent findings. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of **B.C. Chaturvedi Vs. Union of India & Ors**, since reported in **1996 Supreme Court Cases (L&S) 80** and **State of T.N. and Another Vs. S. Subramaniam** since reported in **1996 Supreme Court Cases (L&S) 627**; The ratio of these judgments is that a Tribunal can interfere with an order of punishment only where the authority held the proceedings against the delinquent employee in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry. It was also submitted on behalf of the



respondents that since a departmental appeal was pending, the applicants should have waited for the passing of the order by the appellate authority.

8. The Tribunal, however, rejected the contentions of the Railway and reached to a conclusion that the order of punishment is bad in law and the same seems to be stage managed and is liable to be quashed. Other submissions of the Railway as noticed above were also rejected by the Tribunal giving reasons therefore which we shall take note of while finally concluding this judgment.

Stand of the Respondents-writ petitioners.

9. The writ petitioners before this court attempted to assail the order passed by the Tribunal and in course of argument it has been submitted that the disciplinary proceeding has been conducted under the relevant Service Rules and punishment has been imposed upon the respondent no. 1 as the charges were proved and Tribunal had no legal and valid reason to interfere with the order of punishment.

10. Learned Senior counsel appearing on behalf of the Railway submitted that the delay in initiation of the minor penalty proceeding against respondent no. 1 is not such that the same could render the disciplinary proceeding vitiated.



Submission of the applicant-respondent no.1

11. Learned counsel representing respondent no. 1 has opposed the writ application primarily on the ground that there is a finding of the Tribunal that the respondents (the present petitioners) were not fair in issuing a memorandum of charges because they were trying to twist the truth after a long delay. It is further submitted that the learned Tribunal has rightly come to a conclusion that the inordinate delay in initiating a minor penalty proceeding is such that the memorandum of charges could have been quashed on the ground of *mala fide* and inordinate/unexplained delay. It is not in dispute that the allegations leveled against the respondent no. 1 were based on record and, therefore, there was no plausible ground for initiation of a minor penalty proceeding after nearly five years.

12. Learned counsel further submitted that the joint note dated 18.10.2007 had no evidentiary value at all as the very existence of the note became doubtful due to the assertion of the MLA, Sri Vijayendra Kumar Yadav that his signature was forged on the said note. The Vigilance team in fact changed its stand and vide letter dated 30.12.2009 (Annexure A/9 to the O.A.) informed the MLA that the joint note was investigated and it revealed that he was not signatory to the said joint note.



Learned counsel for the respondent no. 1 has assailed the punishment order also on the ground that on receipt of minor penalty charge-sheet vide letter dated 20.06.2012 (Annexure-3 to the O.A.) the respondent no. 1 wanted passengers reservation chart of Rajdhani Express dated 18.10.2007 of H-I Coach in Coupe "C" and copy of requisition slip of the passengers traveling in H-I "C" Coupe. The Railway made available the chart but never supplied or relied on the requisition slip which could have been the primary document by which the delinquent employee could have been charged for seeking a reservation illegally in AC 1st Class and 2nd AC simultaneously for the said train. It was also submitted that even before initiation of minor penalty proceeding, the Vigilance had already fixed the penalty, it will be evident from Annexure-R/3 which is a letter dated 28.03.2012 written by Director, Vigilance (T) Railway Board to the General Manager (Vigilance) in which an advise was given to initiate a minor penalty proceeding against respondent no. 1 with a view to impose a penalty other than censure and withholding of passes/PTOS against the respondent no. 1. This letter of Vigilance is a proof of mala fide initiation of the proceeding after a lapse of so many years.

Consideration



13. We have considered the rival submissions and have perused the materials available on record, the minor penalty proceeding relates to an incident which had taken place on 18.10.2007. It is not denied that a preliminary inquiry was held in the matter and thereafter no action was taken against respondent no. 1. From Annexure-R/3 to the O.A., which is a letter dated 28.03.2012, it is crystal clear that the then Director, Vigilance (T) after a long lapse of time had advised the General Manager (Vigilance) to initiate a minor penalty proceeding against respondent no. 1 with a view to impose penalty other than censure and withholding of passes/PTOS. Thus, we find force in the submission of learned counsel for the respondent no. 1 and the finding of the Tribunal that even before initiation of the minor penalty proceeding the punishment had already been fixed or at least advised to the disciplinary authority and, therefore, there was no occasion for the disciplinary authority to apply his independent mind. The Tribunal has quoted the findings of the disciplinary authority in paragraph-3 of its order and the same is reproduced hereunder:

"3. Regarding simultaneous use of two duty passes on same journey, while the use of metal pass for the reservation and performing journey in AC II Tier has been accepted by her, the use of card pass has



been denied. It is noted that card pass number has been used and mentioned in the First AC Chart [hand written] and again the same card pass used for preparing EFT but on these two documents there is no further witnessing/authentication by any other independent person which is desirable in case of dispute and also there is no documentary evidence further to prove conclusively that the same card pass was used by her for reservation in First AC except version of the signatories of the Joint Note dated 18.06.2013. As some version of the Joint Note is totally contradicted by Hon'ble MLA, therefore, the evidence of Joint Note in this regard also may not be fully relied upon. To support the contents of Joint Note, in this regard further evidences are not available. This leaves a lot of gap to establish conclusively the use of Card Pass for the purpose or reservation in 1st AC in Rajdhani Express 12309 on above date. Therefore, the benefit of doubt may be given to C.O. in this regard.

14. The aforesaid finding of the disciplinary authority leads to one and only one conclusion that there was no legal evidence on record against respondent no. 1 and therefore he could not have held the respondent no. 1 guilty of the charges but because there was an advise from the Vigilance to initiate a minor penalty proceeding with a view to impose a punishment other than what was



suggested in the letter (Annexure-R/3), the disciplinary authority proceeded to impose the punishment of reduction of one stage in time scale of pay for a period of one month without cumulative effect against the respondent no. 1. The Tribunal, therefore, rightly came to a conclusion that from the very inception the punishment was pre-judged. The another aspect which the Tribunal has gone into is that the role of Central Vigilance Committee (CVC) is not at par with role of UPSC. Under Rule 11 of Railway Servants [D&A] Rules, 1968, power has been conferred upon disciplinary authority for consulting Union Public Service Commission, but no power has been conferred upon CVC of Railway Board to exercise such advisory power.

15. We are in agreement with the finding of the learned Tribunal that even though, an appeal was preferred by respondent no. 1 against the order of punishment but despite a lapse of over two years the same was not disposed of, and in this matter which is in the nature of minor penalty proceeding, the Tribunal did not want to protract the litigation that too when there were materials on record to show that it was a case of no evidence.

16. Submission of learned counsel for the petitioners that the Tribunal had no legal and valid



reason to interfere with the order of punishment is not fit to be accepted on the face of what has been recorded by the disciplinary authority in paragraph 3 of his order. We are in agreement with the view taken by learned Tribunal that the whole disciplinary proceeding was liable to be quashed, the Tribunal, however, has by applying self restraint restricted it's order to the extent of setting aside of the order dated 26.06.2013 i.e. the order of punishment only and thereby the Tribunal has taken a reasonable view of matter. Thus, the order of the Tribunal does not suffer from any illegality or infirmity and we hold so accordingly.

17. In the result, we find no merit in the writ application and the same is dismissed. No order as to costs.

(Rajeev Ranjan Prasad, J.)

I agree.

(Ajay Kumar Tripathi, J.)

Rajeev/-

AFR/NAFR	AFR
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