

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10387 of 2013

=====

Pankaj Kumar Son Of Sri Ravindra Nath Thakur Resident Of Village And Post
Rahikpur Thela Mohan, Police Station - Renugaon Simraha, District - Araria,
Presently Posted As Divisional Inspector - 1, IPF, DI Cell, Danapur, District - Patna

.... Petitioner/s

Versus

1. The Union Of India, Through The Director General Railway Protection Force,
Ministry Of Railway, Railway Board, Rail Bhawan New Delhi
2. The Director, Ministry Of Railway, Railway Board, Rail Bhawan New Delhi
3. The Deputy Director, Security (Establishment) Ministry Of Railway, Railway
Board, Rail Bhawan New Delhi
4. The Director General, Railway Protection Force, Rail Bhawan New Delhi
5. The Inspector General - Cum - Chief Security Commissioner / Railway
Protection Force East Central Railway, Hajipur, District - Vaishali
6. The Additional Chief Security Commissioner / Railway Protection Force East
Central Railway, Hajipur, District - Vaishali
7. The Senior Divisional Security Commissioner, Danapur, District - Patna
8. Sri Santosh Kumar Dubey Son Of Late Shankar Dayal Dubey Resident Of
Village - Tulsi Harlgaw, District - Ara, Presently Posted As The Senior
Divisional Security Commissioner, Danapur, District - Patna
9. The Assistant Security Commissioner, Railway Protection Force - Cum -
Enquiry Officer, Training Centre, Mokama Ghat, District - Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shravan Kumar, Sr. Adv.
Mr. Satish Kumar Singh, Adv.
Mr. Dinesh Maharaj, Adv.
For the Respondent/s : Mr. Anil Kumar Sinha, Adv.
Mr. Akash Keshari, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-12-2017

Heard learned counsel for the petitioner and counsel
for the Union of India.

In the present case, the petitioner is challenging the
order and direction vide letter no. D.S.C./DE/153/C.S.-02/2013/505
dated 23.01.2013 and letter no. Sr.DSC/Danapur/TE/153/CS-



02/2013/1490 dated 06.03.2013 issued by the Senior Divisional Security Commissioner, RPF, Danapur, whereby and whereunder, the said authority has initiated a departmental proceeding in respect of old charges against the petitioner under Rule 9(i)(ii)(iii) of the Railway Protection Force Rules, 1987.

It is the second time the petitioner has approached this Court, earlier also the petitioner had filed C.W.J.C. No. 9783 of 2012 (Pankaj Kumar Vs. The Union of India & Ors.) in which the petitioner had challenged the order dated 6.5.2012 issued by the Additional Chief Security Commissioner, Railway Protection Force, East Central Railway had suspended the petitioner under Rules 133 and 134 of the Railway Protection Force Rules, 1987 after discussing several provisions of Rules, specifically referred to Rule 25 of Schedule III and Rule 133 of the Rules holding that no proper material has been brought to the notice the power of Additional Chief Security Commissioner to pass such order.

Instead of giving details of the fact, the present writ application is disposed by taking into consideration the necessary facts. The petitioner was holding the post of Inspector of Railway Protection Force at Kiul. A message was received from the Control Room that an accident of Train No. 53625 UP with Bolero vehicle had taken place at Kiul-Gaya Section at Lakhisarai-Sarai at level



crossing no. 4C (manned), he quickly responded and recorded in the Station Diary and proceeded along with constable at the site as per information but, after a while, he received another message from the Control Room that the reported accident, in fact, was a Mock Drill as a part of testing the response of force. In order to confirm the said message, he contacted his immediate superior, namely, Divisional Chief Security Commissioner, Danapur who confirmed the said message and asked him to return as the same was Mock Drill and, accordingly, the petitioner returned and recorded all these facts in the Station Diary which he has also informed the Control Room at Danapur. As the petitioner did not arrive as per information, landed him in the departmental proceeding, firstly, he was put under suspension by the Additional Chief Security Commissioner and this Court held that the Additional Chief Security Commissioner has got no jurisdiction to deal with any of the matter with respect to the departmental proceeding.

In the present case, the petitioner is challenging the initiation of a departmental proceeding, has taken identical point which this Court has decided wherein it has been held that the Additional Security Commissioner, Railway Protection Force, East Central Railway is not authorized to initiate a departmental proceeding, only two classes of authority can initiate a departmental



proceeding i.e. the Inspector General cum Chief Security Commissioner or the Divisional Chief Security Commissioner, Railway.

The Railway has filed counter affidavit but nowhere denied the question raised by the petitioner.

Learned counsel for the petitioner has drawn the attention that the proceeding has been initiated on the direction of the Additional Chief Security Commissioner, written a letter to the Senior Divisional Security Commissioner to initiate proceeding, when this Court already having held that he has no authority to initiate a proceeding, in such circumstances, the proceeding on his direction is illegal.

When an authority has no jurisdiction to initiate a proceeding, proceeding started at his instance by the Junior authority, who is under his control will face same fate, as direction for initiation of a proceeding has been given by an authority who has no jurisdiction to initiate a proceeding. It is well known principle of law, when an authority has been assigned to initiate a proceeding has been conferred to particular authority, it is he who has to apply his independent mind and take decision, not to sway away or to be dictated by the higher authority, it amounts to usurping the order of the junior authority vice-versa for the junior authority to



abdicating his power to senior authority which cannot be allowed to sustain in view of the rule governing the service condition of the employees.

In that view of the matter, both the orders contained in letter no. D.S.C./DE/153/C.S.-02/2013/505 dated 23.01.2013 and letter no. Sr.DSC/Danapur/TE/153/CS-02/2013/1490 dated 06.03.2013 as also the order dated 27.12.2012 passed by the Additional Chief Security Commissioner, RPF, East Central Railway, Hajipur are quashed with a direction to the Inspector General cum Chief Security Commissioner / Divisional Chief Security Commissioner, Railway to apply his independent mind and take a decision as per material available on record.

Accordingly, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.01.2018
Transmission Date	NA

