

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.85 of 2016

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Mazharul Bari son of Late Md. Ishaque, resident of Laxmi Narayan Road,
Mohallah- Islampur, P.O.- Muzaffarpur, P.S.- Muzaffarpur (Town), District-
Muzaffarpur (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the General Manager, North Central Railway, Allahabad
2. The Additional Divisional Railway Manager, North Central Railway, Jhanshi (Uttar Pradesh)
3. The Senior Divisional Operations Manager, North Central Railway, Jhanshi (Uttar Pradesh)
4. The Divisional Operations Manager, North Central Railway, Jhanshi (Uttar Pradesh)
5. The Divisional Commercial Manager, North Central Railway, Jhanshi (Uttar Pradesh)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Advocate

For the Respondent/s : Mr. Bijoy Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 30-01-2017

When the matter was earlier heard on 23.01.2017, only to test the *bona fide* of the petitioner, time was granted to bring on record all the medical prescriptions along with supporting pathological reports to support the plea taken, that the petitioner was very unwell which prevented him from performing his duty for 13 long months. Today, when the matter is taken up, counsel for the petitioner shows



his inability to produce such evidence as per the direction dated 23.01.2017. Obviously the defence, which was taken by the petitioner as a justification for his prolonged absence is like an *alibi*, which has failed. Therefore, the reason for his prolonged absence is absent. If that be so, the authorities committed no wrong by issuing an order for his removal, which was converted into compulsory retirement by the Appellate Authority.

2. Initially the decision to compulsorily retire the petitioner was interfered in previous O.A. No. 571 of 2006 since the order was non-speaking one. The Tribunal allowed the O.A., quashed the order, remitted the matter back to the Appellate Authority to consider the matter afresh. This time Appellate Authority passed an order of removal. Such decision became a matter of challenge in the present O.A. No. 199 of 2011, which was finally heard and disposed of on 26.05.2015. The Tribunal was of the considered opinion that when the previous order of compulsory retirement after a finding of guilt in the enquiry was quashed on the ground of being non-speaking and remitted the matter back to the Appellate Authority, the Appellate Authority could not work as Revisional Authority and enhance punishment from



compulsory retirement to removal. This was so taking into consideration the power of revision under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968.

3. In totality, therefore, and in the background of the previous litigation as well as holding that the nature of the misconduct being such, dismissal would be too harsh a punishment, therefore, the Tribunal directed the Authority to treat the order of compulsory retirement to be a befitting order in the nature of misconduct committed by the petitioner.

4. Learned counsel for the petitioner makes effort to reopen the whole issue questioning the manner in which the enquiry was held etc. etc., but with due respect to the counsel, all those issues have been merged firstly in O.A. No. 571 of 2006 and then in O.A. No. 199 of 2011. The matter cannot be reopened and taken as *de novo* proceeding before this Court.

5. In the totality of the circumstances, the Tribunal has passed the correct order. Petitioner should be more than happy that earlier period of work under the railways has not gone in vain because it would be treated as a case of compulsory retirement with compassionate benefit.

6. Since the order of the Tribunal does not



suffer from any irrationality of vice, the writ application is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2017
Transmission Date	NA

