

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2214 of 2019

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1. The Union of India through General Manager East Central Railway, Hajipur, District- Vaishali (Bihar)
 2. The General Manager (Personnel), East Central Railway, Hajipur, District – Vaishali (Bihar)
 3. The Divisional Railway Manager, East Central Railway Sonpur, District - Saran
 4. The Senior Divisional Operating Manager, East Central Railway, Sonpur, District Saran (Bihar)
 5. The Senior Divisional Personnel officer, East Central Railway, Sonpur, District - Saran (Bihar)
 6. The Assistant Operating Manager, East Central Railway Sonpur, District – Saran (Bihar)
 7. The Station Superintendent, East Central Railway, Narayan Anant (Bihar)

... .. Petitioner/s

Versus

1. Binod Kumar, Age 45 years S/o Ram Balak Mahto working as substitute (Group-D) under station superintendent East Central Railway, Narayanpur Anat (Bihar)
2. Lakhendra Rai, Age 50 years, S/o Mishri Rai, working as substitute (Group D) under station superintendent East Central Railway Narayanpur Anat (Bihar)
3. Vijay Kumar Rai, Age 48 years, S/o Raj Nath Rai working as substitute (Group D) under Divisional Operating Manager East Central Railway Narayanpur Anat (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Anand Kumar, Advocate
For the Respondent/s : Mr. Munna Pd Dixit (M.P. Dixit), Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 25-02-2019

The Union of India, through the General
Manager, Central Railway, Hajipur is before us challenging the



order of the Tribunal and seeking a writ in the nature of certiorari for quashing the order dated 20.07.2018 passed in O.A. No. 050/392 of 2015 by a Division Bench of Central Administrative Tribunal , Patna Bench, Patna (hereinafter referred to as the “Tribunal”) by which the show cause notice dated 02.03.2017 and order dated 31.12.2013 passed by the Disciplinary Authority and also the order dated 18.01.2017/10.02.2017 passed by the Appellate-cum-Revisional Authority by which the respondent no. 2, O.A. applicant had been dismissed from service, has been quashed.

2. The sole issue raised in this writ application is whether an employee, who had been allowed to continue in service could be removed by the Employer, if he had secured his appointment on the basis of forged educational document.

3. The factual matrix of the case is that respondent no. 1, 2 and 3 had been appointed on 15.03.1983, 15.04.1976 and 20.03.1994 respectively as “substitutes”. After completion of continuous period of 120 days, they were given a temporary status with effect from 29.06.1993, 13.05.1995 and 01.05.1998 respectively. The screening test for regularization of such substitutes, who were on roll as on 30.04.1996 was held at Sonapur Division and out of list of 222 screened substitutes for



their posting against Group-‘D’ posts, the name of the present respondents figured at Serial NO. 196, 202 and 221 respectively.

4. Thereafter, the name of the respondents and few others including one Gautam Prasad Singh were being excluded from being posted for the reasons that the Headmaster of the Government Primary School had given a letter dated 13.02.2004 indicating that the certificate of the respondents were false and bogus. Consequently, the respondents were issued with major penalty chargesheet on 15.01.2005 and 14.01.2005 respectively, for having allegedly submitted false certificate from the said school.

5. However, after enquiry, the Enquiry Officer found the allegations leveled against them as false and baseless and, therefore, the Assistant Operating Manager, East Central Railway, Sonapur (Division-6), basing his decision on the note of the Enquiry Officer, exonerated the respondents vide his order dated 04.04.2008 and 23.01.2006 respectively.

6. Another similarly placed employee namely, Gautam Prasad Singh was also exonerated by the respondents. The said Gautam Prasad Singh was however, not regularized and accordingly, he preferred a O.A. No. 49 of 2012 for his regular posting against Group – D posts which was allowed by



the Tribunal vide its order dated 30.01.2013.

7. The present respondents had also approached the Tribunal in O.A. No. 385 of 2018 which too was disposed of on 03.05.2013 with a direction that if the cases of the petitioners of O.A. No. 385 of 2013 were found be similar to that of the petitioner in O.A. No. 49 of 2012, then the said representation be considered in accordance with law and judicial pronouncement and be disposed of by reasoned speaking order within a period of three months.

8. It appears that the case of the present respondents were not considered as per the directions of the Tribunal in O.A. No. 385 of 2013 and accordingly, the employer filed C.P. No. 4 of 2014. Instead of dealing with the representation of the respondents, the matter was referred to the General Manager for exercising of *suo moto* power of revision in terms of Paragraph-20(e) of the Master Circular-67. This action was occasioned six years after their exoneration from the charges by the Disciplinary Authority and on account of the pendency of such disciplinary proceedings, the respondents were not posted on regular basis as Grade-‘D’ employees after reference of the case to the Divisional Authority.

9. Faced with such a situation where the



employees were issued show cause notices. O.A. No. 050/392/2015 was filed by the said employees challenging the show cause notice issued after their exoneration vide order dated 01.01.2014.

10. It is important to indicate that that of O.A. No. 050/392/2015, the respondents had filed their written statement before the said Tribunal. In their written statement, the petitioners/respondents stated that the cases of the three employees-respondents had been examined again wherein two specious grounds were raised denying their claim. Firstly, as to what would be the effect of the documents upon which the appointment/regularization of services of the employees was sought to be granted and the second, as to whether the decision of the Disciplinary Authority in the DE proceedings can be brought under the purview of a Suo moto Revisional jurisdiction of General Manager as indicated in paragraph – 20 (e) of the Master Circular.

11. The said paragraph-20 of the Master Circular No. 67 is quoted hereinunder.

20. Revision/Review

a) Revision is different from review.
Review in terms of Rule 25(A) can be undertaken only by the President and only



when some new evidence which could not be produced or was not available at the time of passing the order and which has the effect of changing the nature of the case, is brought to the notice of President. Both revision and review can be undertaken either suo-moto or on submissions of a petition by the employee.

b) Revision can be undertaken by the President, Railway Board, GM or any other authority not below the rank of Dy. HOD. It can be undertaken on consideration of a Revision Petition submitted by the employee or as a suo-moto exercise. If undertaken suo-moto, then the revisionary proceedings should not be started till disposal of the appeal, if already submitted or till the expiry of the limitation period of 45 days for submission of appeal. This, however, does not apply to revision of punishment in case of railway accidents.

(Rule 25 (2) of RS (D&A) Rules, 1968)

c) Where a revision petition is submitted by the employee, the petition should be dealt with in the same manner as if it were an appeal. Thus, the time limit for submitting the revision petition is also 45 days, which needs to be indicated in the appellate order and the Revising Authority should also consider the case in the same



manner as the Appellate Authority is required.

(Rule 25(3) of RS(D&A) Rules and Board's letters No. E (D&A) 84 RG6-44 dt: 8.1.85 and 2.12.86)

d) The Revising Authority has to be higher than the Appellate Authority both in cases where an appeal had been submitted and disposed of and where no appeal was preferred. This stipulation, however does not apply to revision by President.

(Rule 25(4) of RS(D&A) Rules, 1968)

e) If suo-moto revision is undertaken beyond the time limits given below, then it can be done only by the General Manager or Railway Board provided they are above the Appellate Authorities or by the President even if he happens to be the Appellate Authority:-

i) Beyond 6 months from the date of the order to be revised in case where it is proposed to impose a penalty (where no penalty is in force) or enhance a penalty.

ii) Beyond one year from the date of the order to be revised in case where it is proposed to cancel the penalty imposed or reduce the penalty.

These time limits are relevant only for suo-moto proceedings and not for consideration and disposal of Revision Petitions, which have to be done only by prescribed Revising Authority subject to



condonation of delay, if any, in submission of revision petitions.

(Rule 25(5) of RS(D&A) Rules)

f) If the Revising Authority proposes to impose a penalty (where no penalty has been imposed) or enhance the penalty, then a show cause notice has to be issued to the Railway servant indicating the proposed penalty, to enable him to represent against the said penalty. If the proposed penalty is such that holding of an inquiry is essential before its imposition and if an inquiry has not already been held in that case, then an inquiry should first be held before the proposed penalty can be imposed by the Revising Authority.”

12. In view of the fact that the respondent no. 2, namely, Lakhendra Rai was ordered to be removed from service about one month prior to his superannuation by means of order dated 18.01.2017/10.02.2017, wherein the Revisional Authority-cum-Zonal Manager exercised his power under Rule 25(5) and had issued the removal order, the same was challenged in M.A. No. 74 of 2017.

13. The respondents of the present writ petitioners had filed an M.A. No. 107 of 2017 bringing a show cause notice dated 02.03.2017 issued by the General Manager under Rule



25(5) of the Railway Servants (D&A) Rules 1968 in the capacity of Revisionary Authority. The said show cause notice indicated that the General Manager did not agree with the decision of the Disciplinary Authority regarding exoneration and proposed to impose a higher penalty for which a show cause notice had been issued as such, the respondents were allowed to amend the prayer to challenge the show cause notice as well. It was contended by the respondents in O.A. that such show cause notice issued by the Revisionary Authority beyond the reasonable period of six months, was not permissible as it had been done to revise the punishment order after three years and that too after the delinquent had already undergone the punishment. An order dated 11.05.2016 was also brought on record by the respondent-employees which had been passed in O.A. No. 536 of 2013. In the said case, the employee had prayed for a similar posting but since he had been punished for fake educational certificate, his O.A. was dismissed by the Tribunal and it was held that the case was not similar to those of O.A. No. 49 of 2012 and O.A. No. 385 of 2013. The respondents had also filed a copy of part- VI of Railway Servants (D&A) Rules 1968, wherein it had been clearly indicated that there is no limitation on the exercise of powers by



the Railway Board or the General Manager of the Zonal Railways in such matters, therefore, their actions are in consonance with the provisions of the statutory rules, 1968. Rule 25 of RS (DA) Rule 1968, relating to revision powers which are special powers to the designated authorities, are quoted hereinunder for ready reference.

“ 25 Revision.....

Provided further that no power of revision shall be exercised under this Rule:

(i) By the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) By a revision authority unless it is higher than the appellate authority there an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired.

Note :- This proviso shall not apply in cases or revision by the President.

Provided further that no action under this rule shall be initiated by

(a) an appellate authority other than the President or (b) the revision



authorities mentioned in item (v) of Sub-Rule (1) :-

(i) More than six months after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or

(ii) More than one year after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant.

Note :- (1) The time limits for revision of cases mentioned in the provision shall be reckoned from the date of issue of the order proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

(2) When the revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate



authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.”

14. The learned Tribunal, however, failed to consider the contentions of the writ petitioners as stated in their written statement and erroneously held that O.A. applicants were entitled to the relief sought for by them. It accordingly, set aside the impugned notices issued by the Revisional Authority and also held that the removal of Lakhendra Rai from Railway service was illegal and quashed the same vide its judgment dated 02.07.2018. Aggrieved by the aforesaid order, the Railways, respondents in the Tribunal have preferred this writ petition.

15. Learned counsel for the writ petitioners/Railways thus, asserted that the General Manager is well vested with the power and as per the note appended to the Rules and there is no restriction of any time limit when such revisional powers can be exercised. Learned counsel for the writ petitioner urging his contention submitted that since the revisional powers fully empowered the railways to take action in cases of fraud, such powers could well be exercised without circumscribing it within the narrow parameters of any



limitation. The present respondents had obtained their employment on the basis of fraudulent documents and, therefore, it was open to them to analyze such circumstances and take appropriate action under the revisional jurisdiction by the General Manager as envisaged in the Rules.

16. Learned counsel for the writ petitioner further submitted that the respondents had obtained employment on the basis of false school leaving certificate and, therefore, even though the Disciplinary Authority had exonerated them, it was open to the respondents to take appropriate steps against them within the parameters of the extent rules. It was thus, urged that the order of the Tribunal was wholly erroneous and not based on factually correct proportion and, therefore, warrants interference by this Court.

17. In this context learned counsel for the petitioner has placed a judgment before us in the case of **Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & Others** reported in (2008) 13 SCC 170 wherein at paragraph 13, it has been held as follows:-

“Both the issues are not longer res integra. The implication of misuse of the benefits conferred by the Constitution on a particular section or sections of the



citizenry were highlighted by this Court in **Madhuri Patil v. Commr., Tribal Development**. It was said that the admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled caste or Scheduled Tribe or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. Therefore, with a view to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, the Court issued as many as fifteen directions. One of the directions so issued, was that as soon as the findings is recorded by the Scrutiny Committee, holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the education institution concerned, or the appointing authority with a request to cancel the admission or the appointment. Thereupon, the admission or the appointment shall be cancelled without any further notice to the



**candidate and the candidate shall be
debarred from from further study or
continue in office in a post.”**

18. Similarly, in the case of **B.C. Chaturvedi Versus Union of India & Others** reported in **(1995) 6 SCC 749**, it was held that judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. It was held in the said case that the Court or Tribunal may interfere where the conclusion or findings reached by the disciplinary authority is based on no evidence.

19. Learned counsel for the writ petitioner has also drawn the attention of this Court to the judgment of the Apex Court in the case of **Bank of India & Anr. Vs. Avinash D. Mandivikar & Ors.** reported in **(2005) 7 SCC 690** wherein it has been held that when fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Mere delayed reference when the foundation for the same is alleged fraud does not in any way affect the legality of the reference. (para-11).

20. Reliance being placed on the aforesaid



citations, it was thus, submitted by the learned counsel for the writ petitioner, that the order of the Tribunal is wholly erroneous and is based on such reasons which are neither tenable on facts nor on law and, therefore, the same should be set aside and the order of the dismissal with regard to the respondents be maintained.

21. We have heard learned counsel for the parties and perused the materials on record. The very first issue which has engaged our attention is the order of a Coordinate Bench of this Court passed in C.W.J.C. No. 11853 of 2017, the sum and substance of which is extracted hereinunder:-

“Heard learned Senior counsel for the petitioners and learned counsel for the sole respondent.

The court does not appreciate the conduct of the authorities of the Railway in carrying out frivolous litigations, wasting valuable time and resources both of the organization as well as that of judicial forums.

The facts of the present case compels this court to observe as above, and, therefore, not only the writ application is fit to be dismissed without any interference with the order of the Central Administrative Tribunal, Patna



Bench, Patna (hereinafter referred to as the “Tribunal”) dated 02.05.2017 passed in O.A. No. 535/2013, but it is a fit case in which exemplary cost should also be imposed upon the authorities of the East Central Railway, Hazipur, District Vaishali.

O.A. No. 535/2013 was preferred by one Kali Nath Rai, who is the private respondent no. 1, seeking following reliefs:

“(i) (a) that Your Lordships may graciously be pleased to direct/command the respondents to post the applicant also against regular post (Group-D) without any further delay with effect from the date of issuance of Annexure-A/2.

(b) or at least from the date of his junior figured at Serial No. 222 in view of the order passed in Annexure A/7 and A/8.

(ii) That the respondents be further directed/commanded to grant all consequential benefits such as difference of salary, seniority, due promotion and benefit of



ACP/MACP etc. in favour of the applicant.

(iii) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.

(iv) That Your Lordships may be pleased to quash and set aside the order dated 02.03.2017 issued by the Respondents as contained in Annexure-A/2 as unjust, illegal, unconstitutional, every way bad in law.”

The reason for filing the O.A. and seeking relief was that a major penalty charge-sheet was issued against the applicant private respondent on 02.01.2004. The allegation was that he had submitted a false certificate of a school for obtaining employment. Enquiry was held. The enquiry report dated 16.09.2005 categorically concluded that the charge against the applicant was not proved.

The disciplinary authority vide order dated 01.03.2007 accepted the enquiry report, exonerated the private respondent of the charges, but still, for reasons best known to the railway authorities, from 2005 till the filing of the



O.A., the private respondent was not given a post and posting.

Only when the O.A. was filed and the notice was issued to the Railways, they hurriedly dug out the old file and forwarded the case of the General Manager to exercise the power of revision, nine years after exoneration by the disciplinary authority and only to prompt the judicial proceeding, the General Manager decides to issue a notice. This notice was also challenged in the O.A. through M.A.

It is also significant to note that the relevant provision which vests power with the revisional authority is Rule 25, which has been quoted by the Tribunal and thereafter the Tribunal examined the power of the revisional authority to be exercised by the General Manager or by the Railway Board.

The ground given for invoking the power of revision as emerges from the record is that the disciplinary authority had not considered the case in true spirit. What was the spirit, which was required for consideration by the disciplinary authority, was not expanded or explained by the Railway Authorities. If the Inquiry Officer had exonerated the private



respondent and the findings being what they are, which was not interfered with by the disciplinary authority, the matter should have rested at that. But only to harass a low paid employee, the mightiest power of the highest, in the organization of the railways was invoked and that too erroneously, irrationally and arbitrarily to justify taking action now against a dead issue which have been closed as far back as in the year 2007.

One of the reasons why the railways authorities decided to wake up and take action under the revisional power was because they had no explanation as to why no action was taken for posting the private respondent after the disciplinary authority concluded the enquiry and closed the matter in the year 2007 till the O.A. was filed in the year 2013.

It is a clear case of misuse of power as well as an effort on the part of the railway authorities to cover-up their own omission and target an employee who had been duly exonerated of the charges brought against him and he had a right to be put back in his place which had not been done for a long period of time.

Instead of accepting their omission as well as gracefully accepting the order of



the Tribunal in a case which on facts are not justifiable by any means, now a writ application has been preferred.

The Tribunal has committed no error whatsoever and the findings of the Tribunal that the revisional authority has no business to go into the issue after exoneration by the disciplinary authority after more than a decade and offer justification which are not there, the court refuses to interfere with the order of the Tribunal, dismisses the writ application, but imposes a cost of Rs. 50,000/- (fifty thousand) payable by the railways, especially the General Manager, the revisional authority, East Central Railway, Hazipur, District – Vaishali (Bihar), to the private respondent within a period of four weeks from today for sheer harassment and vexatious litigation which has been carried out by them for so many years. The order of the Tribunal must be implemented forthwith without any delay.”

22. The aforementioned order was with regard to another employee, namely, Kali Nath Rai, who was exactly similarly situated to the present respondents and who had been exonerated of the charges as the private respondents herein and



who had also been deprived of a Group-D posting. In the said case also, the allegation was that he had submitted a false certificate of a school for obtaining employment and after inquiry had been exonerated as the Enquiry Report had categorically concluded that the charge against the said employee could not be proved.

23. Contesting the writ petition, Shri M.P. Dixit learned counsel for the private respondents submits that in the present case also the situation is exactly the same and the Enquiry Officer had not found the respondents herein guilty and 'Fraud' could not be proved in their cases. Thus, the Enquiry Officer/Disciplinary Authority had accepted the report and the charges against them had been dropped. However, after a long lapse, taking recourse to the provisions of Ruls 25(5), the Revisional Authority invoked its jurisdiction and without there being any further material or finding indicating fraud having been practiced by the present respondents, the Revisional Authority proceeded to issue show cause notice for imposing the penalty, of removal of service.

24. We are also in agreement with the aforementioned argument as in our opinion the show cause notice is wholly excessive and not based on any further finding



or any material indicating such finding of fraud and accordingly, we do not find any anomaly in the line of reasoning so as to interfere with the order of the Tribunal.

25. Under such circumstances, this Court finds that though the Revisional Authority is vested with such a power in its revisional jurisdiction and there being no period of limitation for the exercise thereof, suffice it to say that the Court would have supported such action on review, had the authorities been able to establish any element of fraud having been practiced by the concerned respondents.

26. So far as the authorities cited by the writ petitioner are concerned, the present circumstances do not justify its reference and we are of the considered opinion that the exercise of such power after an inordinate period of over 8 years is wholly excessive and not based on any material. Moreover, the show cause notice failed to mention why the Revisional Authority did not agree with the findings of the disciplinary authority and the show cause notice being cryptic and vague, the employee concerned, whose matter had been closed more than eight years back, could not be called upon to answer the same before the Revisional Authority.

27. In the result and for the reasons as discussed



above, we do not find any merit in the present writ application.
The same is accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	26.02.2019
Transmission Date	

