

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5200 of 2019

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Dinesh Prasad Saw @ Dinesh Prasad Son of Late Kalut Saw, Ex. Technician Grade-I, Crane Shop under Production Engineer, Eastern Railway Workshop, Jamalpur (Bihar), presently residing at Sadar Bazar, Khalasi, Mohalla, Mohanpur, Jamalpur, Munger, Bihar- 811214.

... .. Petitioner/s

Versus

1. The Union of India and Ors through the General Manager, Eastern Railway 17, Netaji Subash Road, Kolkata- 700001.
2. The General Manager (Vigilance) Eastern Railway, 17, Netaji Subash Road, Kolkata- 700001.
3. The Chief works Manager, Eastern Railway Workshop, Jamalpur.
4. The Deputy Chief Mechanical Engineer, Crane, Eastern Railway Workshop, Jamalpur (Bihar).
5. The Production Engineer, Crance Eastern Railway Workshop, Jamalpur (Bihar).
6. The Senior Section Engineer, Craneshop, Eastern Railway Workshop, Jamalpur (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Adv.
For the Respondent/s	:	Mr. Anil Kumar Sinha, Adv. Ms. Sushmita Sharma, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-03-2019

Heard Shri Sanjeet Kumar, learned counsel for the petitioner, and Shri Anil Kumar Sinha for the Railways.

This petition questions the order of the Tribunal dated 23rd February, 2017 whereby the claim of the petitioner was rejected against the dismissal order dated 28th June, 2011 and the consequential appellate order dated 7th July, 2013.



The main grievance of the petitioner, as urged by the learned Counsel is that the petitioner has been deprived of the opportunity of defending himself during the enquiry proceedings. It is urged that the respondents did not give a copy of the complaint nor did they proceed in accordance with the procedure prescribed in law for holding the enquiry and conducting it after giving adequate opportunity to the petitioner to defend himself. It is, therefore, submitted that the impugned order has proceed on erroneous assumption of fact and the order of dismissal is in violation of principles of natural justice.

On the other hand, Shri Sinha submits that it is evident that the petitioner had been given more than adequate opportunity to defend himself, but in spite of repeated fixation of dates in the enquiry proceedings and allowing the petitioner to inspect documents, he failed to avail of the aforesaid opportunities and, consequently, it cannot be said that the principles of natural justice have been violated. It is also submitted that the nature of the charge is such that the petitioner deserves a major punishment, inasmuch as, he had obtained money from an individual with a promise for giving him a job in the Railways that was evidence by a document in writing.

We have considered the submissions raised and we



find that the respondents had taken a categorical plea that the petitioner was time and again dispatches several letters calling upon him to inspect documents and then to submit his defense. In spite of this, the enquiry did go on without the cooperation of the petitioner and a report was submitted, a copy whereof was offered to the petitioner with 15 days' time to give reply.

It is evident from the facts on record that the petitioner had approached the Tribunal by filing O.A. No.402 of 2013 whereafter the matter had been remitted to the appellate authority. The Appellate Authority also did not find any infirmity in the proceedings and, consequently, affirmed the order of dismissal.

In view of the charge which has been levelled against the petitioner, we find that the allegation of assurance given by the petitioner was documented and the statement of the imputation of charge categorically mentioned the same whereafter the signatures of the petitioner were tallied with his original signature and it was found that the said signatures were matching. It is on the basis of such material that the enquiry proceeded and the petitioner was given an opportunity to inspect all documents. The petitioner was sent notices at his given address and the same was also pasted outside his residence. The



petitioner, instead of giving his response, did not take any further steps and when a letter was sent by registered A/D, the same was returned with the postal remark 'not found'. However, after the submission of the enquiry report, further opportunity was given, but the petitioner did not submit any reply. These facts which have come on record have been taken notice of by the disciplinary authority, the appellate authority as well as by the Tribunal. Learned counsel for the petitioner has been unable to point out any perversity in the recording of such facts in any of the three orders and, consequently, in view of the aforesaid findings of fact, have been affirmed by the Tribunal, we see no reason to doubt the correctness or the veracity of the record of the proceedings either before the disciplinary authority or before the Tribunal.

In view of these findings of fact that the petitioner himself did not avail of the opportunity, learned counsel for the petitioner urged that the petitioner had been ailing and therefore he could not attend the enquiry proceedings.

We do not find any material to substantiate the said plea of ailment, that too even extending for a period of more than two and a half years when the entire matter was pending before the authority. Consequently, for all the reasons aforesaid,



we do not find any violation of principles of natural justice.

So far as the procedure is concerned, once the enquiry had proceeded and the petitioner did not voluntarily attend the enquiry proceedings, it cannot be said that there was any violation of procedure. Apart from that, it is also on record that the copy of the enquiry report was furnished to the petitioner, but he failed to submit any reply. The petitioner contends that he has not received the same. There is no evidence on record to this fact to counter the aforesaid contentions that were raised and, even otherwise, the petitioner has been unable to place on record before this Court any material which may controvert or contradict the material which formed the basis of his dismissal order. In the absence of any such material or record so as to dislodge the correctness or otherwise of the charges or the evidence in support thereof, we find no merit in the application.

The application is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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