

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5336 of 2012

=====

KANHAI KUMAR MANDAL S/O Sri Madan Lal Mandal Cook Mate, C and
Te. Company, Railway Protection Force, East Central Railway, Danapur, P.O.-
Khagaul, District- Patna Bihar, R/O Village- Jogiyara, P.S.- Jalai, District-
Darbhanga Bihar

... .. Petitioner

Versus

1. The Union Of India East Central Railway, Hajipur, District- Vaishali Bihar
2. The Chief Security Commissioner Railway Protection Force, East Central
Railway, Hajipur, District- Vaishali Bihar
3. The Senior Divisional Personnel Officer, East Central Railway, Danapur,
P.O.- Khagaul District- Patna Bihar
4. The Senior Divisional Security Commissioner Railway Protection Force,
East Central Railway, Danapur, P.O.- Khagaul, District- Patna Bihar
5. The Assistant Security Commissioner Railway Protection Force, East
Central Railway, Danapur, P.O.-Khagaul, District-Patna Bihar
6. The Senior Divisional Financial Manager East Central Railway, Danapur,
P.O.- Khagaul, District-Patna Bihar
7. The Inspector, I.P.F./C.I.B. Railway Protection Force, East Central Railway,
Danapur, P.O.- Khagaul, District-Patna Bihar

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. Munna Pd Dixit M.P. Dixit, Advocate Mr. S.K.Dixit, Advocate Mr. S.K.Choubey, Advocate Mrs. Swastika, Advocate Mr. Shailendra Kumar, Advocate
For the Respondent Railway:		Mr. Devendra Kumar Sinha, Senior Advocate Mr. Keshav Srivastava, Senior Advocate Mr. Abhinay Raj, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

4 21-12-2019 The petitioner is seeking quashing of an order dated

08.10.2009, which, according to him, was never communicated

to him, passed by the respondents, whereby he has been

removed from service on the basis of some complaint filed by a

private person in respect of his educational qualification.



2. It is the petitioner's own case that he was selected as Cook Mate on 03.11.2006 and was sent for training on 01.07.2007. According to him, on 29.02.2008, he received a message about the illness of his mother and after informing the controlling authority about illness of his mother, he proceeded on leave. He resumed his duties on 04.03.2008. A minor penalty was imposed and the period of his absence was treated as unauthorized. It is also his case that without any enquiry, punishment of stoppage of his next increments for three months with non-cumulative effect was imposed vide order dated 29.04.2008. Further, with effect from 14.07.2008, he was placed under suspension. It is peculiar to note that the writ petition came to be filed on 19.03.2012 with a statement in paragraph 7, which reads as follows : -

“7. That it is very relevant to state and submit here that recently the petitioner has come to know about one Letter dated 24.06.2008 issued by Respondent No.2 addressed to Respondent No.7 for making enquiry about the some complaint by one Sri Ramesh Yadav, resident of Mohallah-Badalpura, Khagaul, against the petitioner and he was directed to submit his report within one week but the copy of the same has neither served upon the petitioner nor the so-called complaint has been given for taking his defence.”

3. On 06.07.2008, the petitioner is said to have fallen



ill and he was declared to be mentally unstable. It has further been stated in paragraph 9 of the writ petition that on 18.02.2009, the Inspector, IPF/C&TE, Railway Protection Force, East Central Railway, Danapur, asked him to appear before the Headmaster, of Krishnadhari Dedarnath High School, Khadka, Sitamarhi, on 01.03.2009 and 02.03.2009 regarding the validity of certificate granted by Ex-Headmaster of the said school. The petitioner thereafter makes a statement in the writ petition that the petitioner submitted a representation regarding supply of relevant documents including charge memorandum and so-called complaint, but he did not get any reply.

4. In paragraph 11, it has been stated that the petitioner learnt that he had been removed from service vide order dated 08.10.2009 on the basis of the complaint of one Ramesh Yadav and, therefore, he filed a representation on 11.06.2010 asking supply of so-called complaint, copy of enquiry report submitted by respondent No.7.

5. It is in this background that the petitioner is seeking quashing of the 'uncommunicated' order of removal from service. The facts narrated in the writ application appear to be misleading for the reason that it is not mentioned as to when the petitioner learnt that the order of dismissal was passed. The



statutory rules governing the service conditions of an employee of Railway Protection Force provide for appeal against a disciplinary action. The petitioner apparently did not approach the appellate authority. A statement has been made that the petitioner approached the Public Information Officer, Eastern Central Railways, Danapur, for supply of the enquiry report and the order of dismissal, if any, but no information was supplied to him. Had that been so, the petitioner could have approached the appellate authority under Right to Information Act. The petitioner's plea, that he does not have a copy of the order of dismissal because it was not communicated to him, is not acceptable for this Court in the facts and circumstances as noted above.

6. There should not be any doubt over the legal position that an order of dismissal takes effect only after its communication. If the petitioner had the case that the order of dismissal was never communicated to him, he could have been well advised to approach the authorities allowing him to discharge his duties.

7. In my opinion, though by order dated 26.03.2012, the respondents were asked to file counter affidavit, the averments made in the writ application do not inspire any



confidence for this Court to interfere in writ jurisdiction under Article 226 of the Constitution of India.

8. This application is accordingly dismissed.

9. The petitioner shall, however, be at liberty to approach the disciplinary authority/appellate authority raising the plea of illegal termination of service and non-communication of the order of termination from service.

(Chakradhari Sharan Singh, J)

Pawan/-

U			
---	--	--	--

