

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10414 of 2019

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Dashrath Paswan Son of Late Mahavir Paswan Resident of Mohallah-
Laliyahi, P.O.- Katihar, P.S.- Katihar, Via- Sabab Thana, District- Katihar
(Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, North Frontier Railway,
Maligaon (Guahati), Pin Code -781001.
2. The Divisional Railway Manager North Frontier Railway, Katihar (Bihar),
Pin code- 854105.
3. The Divisional Mechanical Engineer (Power) North Frontier Railway,
Katihar (Bihar), Pin code- 854105.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit, Adv.
Mr. S. K. Dixit, Adv.
Mr. Sanjay Choudhary, Adv.

For the Respondent/s : Mr. Ramadhar Shekhar (Addl. S. C. Railway)

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

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-05-2019

This writ petition assails the order of the Tribunal
dated 28th of March, 2019 and the order dated 31st of October,
2014 whereby the Tribunal has refused to interfere with the
order of removal of the petitioner from the service of the



Railways dated 23.3.2010. The said order of removal was affirmed in appeal on 25.5.2010 and by the revisional authority on 17.12.2010. The prayer made is to quash all these orders and to restore the petitioner's services and grant consequential post retirement benefits.

The main thrust of the arguments of the learned counsel for the petitioner Shri Dixit is that after 20 years of service the petitioner could not be deprived of his services in the manner in which it has been done and, even otherwise, the Tribunal took a pedantic view of the matter when a restoration application was filed after the original application was dismissed for want of prosecution and, therefore, the impugned order dated 28th March, 2019 as well as the order dated 31st of October, 2014 should be set aside and the matter should be remitted back for decision on merits.

Apart from this, during his oral submissions, learned counsel has invited the attention of the Court to the appeals and the revisions filed against the removal order where it is recited that the petitioner is the sister's son of one Late Mahavir Paswan who was the employee of Railways and in whose place the petitioner was given appointment being a dependant son on the basis of a declaration given by him. We



are mentioning this fact as an argument has been advanced on the strength of such disclosure that the petitioner was the adopted son of Mahavir Prswan.

The background is that Late Mahavir Paswan, who is stated to be the maternal uncle of the petitioner, was working in the Railways. After his death, the petitioner was appointed on compassionate basis on the declaration that the petitioner was the son of Mahavir Paswan. This appointment took place on 15th September, 1978.

In the year 2007, a memorandum of charge was handed over to the petitioner on 19.11.2007 that the petitioner at the time of his appointment submitted a false declaration and fraudulently obtained the appointment as being the son of Mahavir Paswan whereas, in fact, the name of his father is Madan Paswan. The petitioner was thereafter transferred on a mutual ground which, in effect, amounts to playing fraud on the Railways and, consequently, he was called upon to answer the said charge.

From the documents on record and the pleadings it is apparent that the petitioner failed to dislodge this fact that he was not the son of Mahavir Paswan and was actually the natural born son of Madan Paswan and his wife who was the sister of



Mahavir Paswan. Thus, by a false depiction the petitioner obtained compassionate appointment and, accordingly, the disciplinary authority after having conducted the enquiry passed the following order on 23.3.2010:

“With reference to the memorandum of even No. dated 19.11.2007, you are hereby informed that the undersigned has passed the following order:

“DA after studying the details of the case, i.e. reports and complaints, investigation by SLWI/KIR declaration submitted at the time of appointment than, witness & I.O’s report has in the opinion that the charge against Sri Dasrath Paswan Greaser Gr.I under SSE/Loco/KIR for fraud appointment on CGA ground established on the basis of reports & evidence which are analyzed in below:-

Sri Dasrath Paswan, Greaser G.I under SSE/Loco/KIR has falsely declared the name of his father, Late Mahavir Paswan in place of Late Madan Paswan and got Rly. Service on CGA on 15.09.1978 at BWF, JMP/ER and later on transferred to KIR on mutual transfer ground on 08/11/2002. Further, in Annexure III, list of document, Dy. Election Officer’s letter along with voter list and Dy. GM/Hajipur/ECR’s letter were also examined in the light of evidence. Apart from the above, investigation report of LWI/I/KIR who after careful examination of the complain submitted his report are found Late Madan Paswan in his (C.O) Father.

Sri Dasrath Paswan, Greaser Gr.I under SSE/Loco/KIR during his representation of SF-5 had failed to reply of charge allegation in article mentioned.

The application of appointment on CGA duly signed by Sri Dasrath Paswan has been seen and found father name mentioned as Late Mahavir and relationship shown as Son/Father. Again during the regular hearing by I.O Sri



Dasrath Paswan replied that after many years he came to know, his father name was late Madan Paswan, but there was no intimation to the Railway in writing. Further, Sri Dasrath Paswan communicated and clarified that his father name mentioned in voter list & registration are correct as per record.

Apart from this Late Sri Mahavir Paswan has already a son and working in the Railway. But after premature death of Mahavir Paswan Sri Dasrath Paswan has taken the advantage of appointment as son of Late Mahavir Paswan on CGA.

Therefore considering all the facts, witness & Documents, I.O's report, DA has come to the conclusion that without any doubt of the case and keeping in mind of reasonable opportunity & fair judgment under DAR the following order passed:

‘Removal from service with immediate effect’

No compensation allowance is sanctioned.”

The appellate authority dismissed the appeal on 25.5.2010 by the following order:

“With reference to your appeal of dated 03.05.10 the appellate authority Sr.DME/KIR has passed the following orders.

- “1. The undersigned has gone through the entire case carefully.
2. It is noted that charges are proved on Sri Paswan beyond doubt. The charges are of very serious nature. Sri Paswan obtain railway service on CGA based on false name of father.
3. The punishment imposed is commensurate with the gravity of offence.
4. The mercy appeal cannot be accepted.
5. The appeal is disposed off keeping the punishment same.”



The revision/mercy petition filed by the petitioner also met the same fate vide order dated 17.12.2010 which is extracted hereinunder:

“With reference to your revision petition of dated 22.06.10, you are hereby informed that the revisionary authority i.e. ADRM/KIR has passed the following order:-

“After going through the appeal submitted by Shri Dasrath Paswan, Ex. Grease/I/KIR and taking into account the entire facts and circumstances of the case my parawise remarks are as below.

1. No comments as it is a matter of fact.
2. No comments as it is a matter of fact.
3. No comments as it is a matter of fact.
4. The reason and logic merits no consideration, as compassionate appointment is only for the legal heir of the employee and does not give any right to the so called adopted son who has not even been adopted legally.
5. Since the initial appointment was itself void abinitio, this issue does not give any right for continuation in service especially when the initial appointment has been based on concealment of material facts and which is criminal offence. That fact would not have resulted in appointment at the first place itself.
6. For the reason explained in Para 5, belonging to down trodden community does not give authority of cheating and concealing of material facts to seek personal illegal benefit.

In view of the above circumstances I am unable to consider the case sympathetically and the punishment of removal from service imposed by the Disciplinary Authority is fair and just in the present circumstances and is so upheld.”



The argument of adoption, which is now sought to be orally raised, overlooks the basic principles of Hindu Law that a sister's son falls within the prohibited category of adoption. We are mentioning this as an argument had been advanced to that effect as noted above.

The original application was filed and remained unattended. Consequently, on 31st October, 2014 the following order was passed:

“None for the applicant. Learned counsel for the respondents submits that this is a matter of compassionate appointment. He submits that in a written statement made by the applicant at the time of his appointment, he states that he was son of Mahavir Paswan but actually he is son of one Madan Paswan. Consequently disciplinary proceeding was initiated against the applicant and he was dismissed from service.

2. Since no one is appearing on behalf of the applicant from last several dates, the OA is dismissed for default.”

A restoration application was filed, but the same was also dismissed holding that the reason given for condoning the delay was not satisfactorily explained and, therefore, the same was also rejected.

Since we have also examined the case on merits and we find no error in the conclusion arrived at by the



disciplinary authority, either by way of any fault in procedure or in awarding the punishment, we see no reason to interfere in this matter at the instance of the petitioner for the reasons given hereinabove. The writ petition, therefore, fails and is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.05.2019
Transmission Date	N/A

