

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10884 of 2015

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1. The Union of India through the General manager, East Central Railway, Hajipur, District, Vaishali (Bihar)
 2. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna Bihar
 3. The Additional Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna, Bihar
 4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O.- Khagaul, District- Patna, Bihar
 5. The Senior Divisional Signal and Telecom Engineer, East Central Railway, Danapur, P.O.- Khagaul, District, Patna, Bihar
 6. The Divisional Signal and Telecom Engineer, East Central Railway, Danapur, P.O.- Khagaul, District, Patna, Bihar

... .. Petitioner/s

Versus

Vipin Kumar S/O Sri Ram Sagar Mahto, Signal Maintaineer Grade-II, East Central Railway Bakhtiyarpur, District-

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. Munna Pd Dixit (M.P. Dixit), Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 20-08-2020

Heard the parties.



Petitioners have prayed for following relief:-

“The present writ application is being filed praying for issuance of a writ in the nature of a writ of certiorari or any other appropriate writ, order or direction, for quashing the judgment and order dated 27.3.2014 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred as CAT) in O.A. No.476 of 2013 whereby the learned CAT has quashed the impugned punishment order dated 11.03.2013 along with second charge sheet dated 19.10.2012 as well as the appellate order dated 12.07.2013 and has directed the petitioners / respondents in O.A. i.e, Railways to restore the pay of the applicant with all consequential benefits.”

Briefly stated the facts of the case is that sole respondent was working as Signal Maintainer, Grade – II, EC Railway, Bhaktiyarpur and was placed under suspension on 13.9.2012 which was subsequently revoked on 8.10.2012 and on same date, he was served with a charge-sheet under Rule 11 of RS (DA) Rules, 1968 and subsequently charge-sheet was cancelled.

Respondent was served with another charge-sheet dated 19.10.2012 under Rule 9 for same set of allegation against which respondent submitted his reply on 30.10.2012, however,



his reply was found not to be satisfactory and inquiry officer was appointed and respondent participated in the inquiry and inquiry officer found the charges to be proved and a copy of inquiry report was sent to respondent and respondent submitted his reply and after considering the inquiry report, reply of the respondent the disciplinary authority imposed punishment of reduction by two stages in the same time scale of grade pay for three years with cumulative effect against which respondent filed appeal but same was also dismissed by the appellate authority by his order dated 12.7.2013 and against order of punishment, respondent filed O.A. before the Tribunal which was allowed by the impugned order.

Respondent/applicant is a railway employee and is controlled by the regulation framed by the railways. The Railway Board has framed its rule on issue according to which when any memo of charge is cancelled and subsequently proceeding is initiated by a fresh charge-sheet, sufficient reasons has to be incorporated for cancellation of charge memo before issuing fresh charge-memo. Railway Board has framed the guidelines and same became a rule by incorporating it in the Manual under Index No.1033 which reads as follows:-

“Sub: Issuing fresh charge Memorandum after cancellation/withdrawal of original charge Memorandum or after



dropping disciplinary proceedings.

A Copy of Railway Board's letter No. E (D&A) 93 RG6-83 dated 1.12.1993 (R.B.E. No. 171/93) is forwarded for information, guidance and necessary action.

Sd/-

FOR CHIEF PERSONNEL OFFICER.

Copy of Railway Board's letter No. E (D&A) 93 RG6-83 dated 1.12.1993 (RBE No. 171/93) addressed to G.M. (P), All Indian Railways and others.

Sub: Issuing fresh charge Memorandum after cancellation/withdrawal of original charge Memorandum or after dropping disciplinary proceedings.

In has come to the notice of the Railway Board that on one of the Zonal Railways, the Memorandum of charges issued to an employee was withdrawn by the disciplinary authority with the intention of issuing fresh detailed charge Memorandum. However, while withdrawing the charge-sheet, no reasons therefor were given and it was only stated that the charge-sheet was being withdrawn. The issue of a fresh charge Memorandum subsequently was challenged by the employee before CAT/Bombay. The Central Administrative Tribunal on hearing the case have quashed the said charge Memorandum holding that unless there is a power in the disciplinary authority by virtue of the rules or administrative instructions to give another charge-sheet on the same facts after withdrawing the first one, the second charge-sheet will be entirely without authority.

2. The matter has been examined and it is clarified that once the proceedings initiated under Rule 9 or Rule 11 of RS (D&A) Rules, 1968 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, necessary that when the intention is to issue a fresh charge-sheet



subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge-sheet afresh appropriate to the nature of the charges.”

It was submitted before the Tribunal that sufficient reasons were not mentioned while issuing the fresh charge memo after cancelling the earlier charge-memo and same being contrary to Rule framed by Railway Board was not permissible. The provision is mandatory and not directory and has been framed for beneficial purpose of delinquent. In the present case, after cancellation of first charge-memo, a fresh charge-memo has been issued without assigning sufficient reason, as such, there is a breach to comply with Board's decision which subsequently became a rule in the procedure law of the departmental proceeding.

Counsel for the respondent has relied upon a judgment and order dated 6.4.2017 passed by Division Bench of this Court in C.W.J.C. No. 1200 of 2017 by which the Division Bench had affirmed the order passed by the tribunal quashing the second charge-sheet as well as entire departmental proceeding after withdrawal of first charge-sheet, same being impermissible in law.

It has been submitted on behalf of Railways that neither the departmental proceeding was dropped nor any fresh



charge-sheet was served upon the petitioner but in first charge-sheet, it was stated that Departmental proceeding was to be conducted for minor punishment, however, the charges being grave in nature, same was cancelled and for same set of charges departmental proceeding is to be conducted for major penalty, as such, said circular was not applicable in facts and circumstances of present case and Tribunal committed a grave error relying upon the said circular and quashed the whole Departmental proceeding including the order of punishment.

Rule being mandatory in nature, same is binding upon railway officials who initiated the departmental proceeding and there is a breach of rule by cancelling the first charge-memo and issuance of second charge-memo without explaining sufficient reasons for issuance of fresh charge-memo as such same was not legally sustainable. However, same being a procedural infirmity could have been subsequently rectified by issuing a fresh charge-memo complying the requirement of aforesaid rule and liberty could have been granted to the railways to issue fresh memo of charge complying the mandatory provision of rule but since employee has resigned from railway service and same has been accepted and has joined a different service of Indian Accounts Service, this Court is not



willing to grant any such liberty to railways and as such, is not inclined to interfere in the impugned judgment and order passed by the tribunal.

The writ petition is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2020
Transmission Date	NA

