

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5725 of 2016

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Jaymangal Vishwakarma, Son of Late Chandeshwar Mistri, resident of
village - Pothahi, P.O. Basuhar, P.S. Punpun, District - Patna

... .. Petitioner/s

Versus

1. The Union Of India through the General Manager (Admin), East Central Railway, Hajipur.
2. The Divisional Railway Manager, East Central Railway, Danapur
3. The Chief Commercial Manager, East Central Railway, Hajipur
4. The Assistant Divisional Railway Manager, East Central Railway, Danapur
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur
6. The Divisional Commercial Manager, East Central Railway, Danapur
7. The Assistant Commercial Manager TC , Danapur
8. The A.P.O., EC Railway, Danapur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vinay Mistry, Advocate

For the Respondent/s : Mr.S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 21-01-2020

Heard learned counsel for the petitioner and learned
counsel for the respondents.

The order under challenge is the order dated 1.09.2015 of the Central Administrative Tribunal, Patna Bench passed in O.A. No. 299 of 2012 whereby the Tribunal has dismissed the application of the petitioner and found that the action of railways in dismissing the petitioner is to be correct. In a nutshell, the challenge is the order of removal dated 7.08.2007 of the petitioner issued by Senior Divisional Commercial Manager, Danapur which



has been affirmed by the order of appellate authority dated 24.12.2007.

While the petitioner was posted in the Commercial Division as a Booking Clerk, the Railway administration found that there was shortage of Rs. 15,249/- which was detected in the statement of October 1994, and further a shortage of Rs. 41,130/- which was detected up-to November 1995. After that, two charge sheets dated 12.6.1995 and 18.03.1996 (Annexure-1) were issued. In both the charges, the inquiry officer has been appointed. With respect to first charge, the inquiry officer has given its finding in the following manner:-

“ Reasons for findings:-

(i) It has been documentarily established that there was a shortage in booking of Rs. 15249/- outstanding at Barh at the end of Oct/94 against the said Sri J.M. Vishwakarma, while working as ABC/BARH.

(ii) The then CBC/RH and the then CTI/MKA who are production witness in the subject case have failed to establish the charge of fraudulent showing of the amount as shortage in booking and its misappropriation by the charged official Shri J.M. Vishwakarma. The charge could not be substantiated either orally or documentarily. No good and plausible reasons could be advanced by the prosecution in support of the charge.



(iii) The occasion of shortage in booking can not totally be ignored but it should not be on a regular basis and should be liquidated immediately by the defaulter.”

With regard to second charge, the inquiry officer has recorded its finding in the following manner:-

“Thus the charges enumerated in annexure-1 of the memorandum i.e. being habitual in creating shortage in booking regularly is proved beyond doubt. Although the misappropriation of the Government money could not be proved clearly but from the fact that a heavy amount was being carried forward month after month and to the tune of Rs. 41,130/- and 1861/- at the close of November 1995 gives scope to suspect misappropriation as railway has not granted licence to the booking clerk for depositing short government money on account of sale proceeds of the tickets regularly and habitually. Thus the said C.O. Shri J.M. Vishwakarma, ABC/BH is held guilty in this case to my conclusion. This is without prejudice.”

With respect to the first charge, the inquiry officer instead of giving his tentative finding of disagreement with a second show cause to the petitioner, appointed a fresh inquiry officer vide letter dated 11.05.1999 (Annexure-4). In the said letter, it has been mentioned in the following manner:-



“ I have gone through the case file including the inquiry report and findings therein. The E.O. has stated that the charge of shortage in booking is proved but the misappropriation by fraudulently showing as shortage in booking is unsubstantiated. With a little more application and through examination of documentary evidences and the witness, it could have been clear whether misappropriation was done or not. Aspects like in detail of shortage in booking i.e. shortage accrual monthwise, has not been thrown light into.

For this aspects, the disciplinary authority has nominated another enquiry officer to conduct the enquiry with respect to the first charge.”

With respect to the first charge, the disciplinary authority should have followed the stipulation prescribed in Rule 10(3) of the Railway Servants (Discipline and Appeal) Rules, 1968 which speaks in the following manner:-

“The disciplinary authority shall, if it disagrees with the findings of inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose”.

In view of provision aforesaid, in the event of disagreement, Disciplinary Authority would issue second show cause with his tentative finding of disagreement, thereafter, he could have proceeded after receipt of reply and could have taken a



decision in accordance with law, but failed to follow, but so far as the second charge of loss of Rs.41,130/- is concerned , the enquiry officer positively has recorded its finding with respect to proving of charge without reasonable doubt and, as such, we do not find any error in action of the disciplinary authority, but with respect to first charge, the disciplinary authority has not followed the due procedure. As it has been found in the second enquiry that the petitioner has misappropriated the amount, even if we remand the matter for fresh consideration with respect to charge relating to misappropriation of Rs. 15,249/-, it will not change the situation as the charge with respect to misappropriation of Rs.41,130/- has been proved. While discharging the duty of booking clerk, he has required to maintain honesty and integrity, but failed to maintain.

In this view of matter, we do not find any error in the action of the department in awarding the punishment of dismissal.

Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	27.01.2020
Transmission Date	N.A.

