

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22558 of 2018

- 1.The Union Of India through the General Manager, East Central Railway, Hajipur, P.O. Digghi Kala, P.S. Hajipur (Town), District Vaishali at Hajipur, Pin Code-841001 (Bihar).
- 2.The General Manager (Personnel), East Central Railway, Hajipur, P.O. Digghi Kala, P.S. Hajipur (Town), District Vaishali at Hajipur, Pin Code-841001 (Bihar).
- 3.The Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
4. The Additional Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 5.The Sr. Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 6.The Sr. Divisional Engineer (Co-ordination), East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 7.The Divisional Engineer(Bridge), East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 8.The Assistant Divisional Engineer(Bridge),East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 9.The Sr. Divisional Finance Manager, East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).
- 10.The Executive Engineer, Bridge/Line, East Central Railway, Danapur, P.O. Khagaul, PS Danapur, District Patna, Pin Code-801105 (Bihar).



11.The Executive Engineer(Bridge), East Central Railway,
Mugalsarai, District Chandauli, Pin Code-232101 (U.P).

12.The Sr. Section Engineer (Bridge), East Central Railway, Garhara,
District Begusarai, Pin Code-851126.

... .. Petitioner/s

Versus

Arjun Rai, son of late Upendra Nath Rai, Chowkidar under Senior
Section Engineer (Bridge) East Central Railway, Garhara, District
Begusarai, Pin Code 851126 (Bihar), Residing at Qtr. No. 294/8, East
Central Railway, Garhara, District Begusarai, Pin Code-
851126(Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anand Kumar, Adv
For the Respondent/s : Mr. Munna Pd Dixit (M.P. Dixit), Adv

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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 : 24-09-2020

Heard the parties.

Petitioners have prayed for following reliefs:-

“(i) For issuance of writ in the nature of certiorari and
order/orders, direction/directions to set aside the order dated



12.09.2018 passed in O.A. No.741/2018 by a Division Bench of Central Administrative Tribunal, Patna Bench (Circuit Bench at Ranchi), (hereinafter referred as “Tribunal”) whereby the speaking order dated 05.09.2018 passed by the disciplinary authority with regard to removal from service of the respondent w.e.f. 07.09.2018, has been quashed without hearing the petitioners and the matter has been remitted back to the petitioner No.10 to re-consider the entire issue. Further, it has also been directed to implement the order dated 11.12.2013 passed in O.A. No.1023/2012 by the earlier Division Bench of this Tribunal with regard to his earlier place of posting on his designation and also to make payment till the disciplinary proceeding comes to an end.

(ii) For staying the operation of the order dated 12.09.2018 passed in O.A. No.741/2018 and also staying the order dated 11.12.2013 passed in O.A. No.1023/2012.

(iii) For any other appropriate order/orders of this Hon’ble Court as may be deemed fit and proper.”

Briefly stated the facts of this case is that respondent-employee Arjun Rai, son of Upendera Nath Rai, Village, Hariprasad, P.O. Murtuza, District, Vaishali was engaged on 09.12.1985 as Night Guard under Eastern Railway on daily wages and was subsequently regularized against permanent group D Post vide order dated 12.12.2005.

A complaint on 7.3.20008 was made by one Arjun Rai, son of Upendra Rai, Village + P.O. Pasopur, P.S.Bhagwanpur, District, Begusarai against respondent-employee that he secured the job by impersonation in place of complainant by submitting fake certificate of Class 8th pass. A



show cause dated 7.7.2009 was issued to respondent-employee alleging securing job by impersonation and respondent-employee submitted his reply on 17.07.2009 denying the allegation. Department got an enquiry conducted by Brijesh Kumar, Chief Staff, Welfare Inspector, Danapur, from the native village of delinquent who submitted his enquiry report dated 22.10.2008 with a finding that in the village Hari Prasad no person named Arjun Rai s/o Upendra Nath Rai resides and in the enquiry proceeding this report dated 22.10.2008 and Brijesh Kumar author of said report was the only witness and document produced by the department.

Charge-sheet dated 02.05.2011 was served upon respondent-employee which is as follows:-

“STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST Sri Arjun Rai, Chowkidar, WORKING UNDER BRI/GHZ.

Article-1

Sri Arjun Rai, Chowkidar working under BRI/GHZ impersonated himself with a view to acquire railway service on the ground of quasi administrative offices employee in terms of Rly Bd's Letter No. E(NG)/II/99/RR-1/15 dated 30.05.2000. Thus he has committed gross misconduct on his part and tried to cheat the railway administration.”

Disciplinary Authority.



In the departmental proceeding initiated against delinquent, J. Singh was appointed Enquiry Officer, who conducted enquiry in which one aforesaid witness Brijesh Kumar was examined on behalf of department and enquiry officer submitted his enquiry report dated 15.09.2011 in which charge was not found to be proved. However, without serving a copy of the enquiry report or giving tentative reasons differing with the finding of enquiry officer the Disciplinary Authority passed an order dated 17.05.2012 against respondent-employee imposing punishment of removal from service against which, he filed O.A. No.1023/2012 which was disposed of on 11.12.2013 after setting aside the order of removal and remanding the matter to the disciplinary authority for passing a fresh order after giving its tentative reasons for differing with the finding of inquiry officer, who found the charges not to be proved and pursuant thereto, fresh order was passed by the disciplinary authority on 27.05.2014 in which charges were found to be proved, however, order of punishment was modified as:-

“(i) Period from the date of removal of Shri Arjun Rai from Railway Service, i.e. from 17.05.2012 shall be treated as Dies Non.

(ii) Further he shall be allowed to join in the lowest starting pay scale of his cadre Chowkidar, i.e. pay scale Rs.



5200-20200/-+Grade Pay Rs. 1800/-.

(iii)Further no payment consequential benefits shall be admissible to Shri Arjun Rai for the period (date of removal) 17.05.2012 to date of joining. Further in grade pay Rs. 1800/-.”

Respondent again filed O.A. No.855/2014 for quashing the order dated 27.05.2014 which was disposed of by the tribunal by its order dated 14.11.2017, with a direction to pass fresh order in terms of Tribunal’s order dated 11.12.2013 passed in O.A No.1023/2012 and thereafter order dated 05.09.2018 was passed by the disciplinary authority after giving disagreement note differing with the finding of the inquiry officer and order dated 5.9.2018 was passed by the disciplinary authority removing respondent-employee from service and the tribunal by the impugned order dated 12.9.2018 has set aside the order dated 05.09.2018 of removal from service and remanded the matter again to the disciplinary authority to consider it afresh, aggrieved by which, present writ petition has been filed by Union of India(Railways).

In the departmental proceeding, complainant never appeared before the inquiry officer to establish the charge of impersonation against respondent-employee that he is real Arjun Rai, son of Upendra Rai and respondent-employee has secured



job impersonating him as Arjun Rai, son of Upendra Nath Rai. Surprisingly, the disciplinary authority has shifted onus to prove on respondent (delinquent) that he has not impersonated himself as Arjun Rai, son of Upendra Rai.

Disciplinary authority did not consider the evidence of defence who were employees working with delinquent employee who were appointed and regularized alongwith delinquent-employee who were also examined by the enquiry officer and they had stated that delinquent had worked with them since 1985 and no case of impersonation is made out against the delinquent-employee.

The disciplinary authority recorded his disagreement note on the findings of inquiry officer, which is as follows:-

- “1. As per enquiry report submitted by SPWI/DNR dtd. 22.10.2008, the person working as chowkidar under SSE/Br/GHZ ie. Sri Arjun Rai, S/o late Upendra Rai seems to be not genuine.
2. The person claiming to be actual Arjun Rai has furnished his representation received through RL no.3144 dtd. 03.3.2008 alleging that you have got rly. Service by impersonating yourself as Arjun Rai.”

After going through the previous orders passed by the tribunal as well as the impugned order and since no tentative reasons were assigned by the disciplinary authority to differ with the finding of inquiry officer by the disciplinary authority and has passed final order dated 5.9.2018 removing respondent-



employee from the service, the tribunal has set aside the order of punishment dated 5.9.2018 and remanded the matter to the disciplinary authority to re-consider and pass a fresh order after assigning tentative reasons to differ with the finding of inquiry officer.

The Apex Court in case of **Punjab National Bank and Ors. Vs. Kunj Behari Misra** since reported in (1998) 7 SCC 84 has held in paragraph no. 19 which reads as under:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

This Court does not find any infirmity or error in the order passed by the tribunal requiring any interference by this



Court in its writ jurisdiction. Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2020
Transmission Date	NA

