

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12873 of 2018

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Ramesh Kumar Gupta S/o Late Yadunandan Prasad R/o Mohalla- Road No.4,
Postal Park, P.O.- Postal Park & P.S.- Jakkanpur, District- Patna

... .. Petitioner/s

Versus

1. The Union Of India through the Central Manager, East Central Railway, Hajipur
2. The General Manager (P), East Central Railway, Hajipur
3. The General Manager (V), East Central Railway, Hajipur
4. The Chief Commercial Manager, East Central Railway, Hajipur
5. The Divisional Railway Manager, East Central Railway, Danapur
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur
7. The Assistant Divisional Railway Manager, East Central Railway, Danapur
8. The Senior Divisional Commercial Manager, East Central Railway, Danapur
9. The Divisional Commercial Manager, East Central Railway, Danapur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms.Vagisha Pragya Vacaknavi
For the Respondent/s : Mr. Anil Kumar Sinha

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 31-08-2020

Heard the parties.

2.Petitioner has prayed for following relief:-

“That this is a writ petition on behalf of the petitioner for issuance of a writ of certiorari or writs in the nature thereof or any other appropriate writs/orders/directions for quashing order dated 22.12.2016 passed in O.A. No. 504 of 2015 passed by the Hon’ble Central Administrative Tribunal, Patna Bench, Patna whereby and whereunder the Hon’ble Bench was pleased not to interfere with the findings of the enquiry report and in the quantum of punishment and accordingly, was pleased to dismiss the OA of the petitioner. The present writ petition is also for quashing punishment order dated 05.04.2013 (Annexure-P/6) along with order dated 03.09.2013



passed by the Appellate Authority (Annexure-P/8) and order dated 29.04.2015 passed by the Revisional Authority (Annexure-P/11) whereby and whereunder the punishment order against the petitioner has been affirmed.”

3. Briefly stated the facts of the case is that petitioner was working as Head Booking Clerk at Patna, a decoy check was conducted by the vigilance wing on 26.07.2009 in which petitioner demanded and accepted Rs. 1465/- from decoy passenger for 5 mail/superfast tickets from Patna to Nanded against the actual fare of Rs. 1315/- as such he realised Rs. 150/- in excess. He swallowed 2 currency notes of Rs. 500/- each to tamper with evidence. Rs. 176/- excess government cash was found from him.

4. A charge memo was issued for major penalty vide memo dated 16.02.2010 including list of documentary evidence as well as oral evidence to prove the charges. Petitioner participated in the inquiry and inquiry officer found all the three charges to be proved. A copy of inquiry report was served upon the petitioner to represent against the finding of inquiry officer and on consideration of representation filed by petitioner the disciplinary authority held the charges to be proved and imposed punishment by which pay of the petitioner was reduced to the initial level for 5 years with cumulative effect.

5. Appeal and Revision filed by petitioner stood dismissed against which he filed O.A. before Central Tribunal



Authority, Patna Bench, Patna, which also stood dismissed by impugned order.

6. Counsel for the petitioner assails the order passed by the disciplinary authority as well as appellate authority to be cryptic and non-speaking.

7. Order passed by the disciplinary authority dated 05.04.2013 reads as follows:-

I have gone through the charges, relied upon documents, DA proceedings, enquiry report of the enquiry officer and representation of the charged official on enquiry report, as maintained in the case file very carefully.

My decisions charge-wise is as under:-

Sl. No.	Charges in brief	Findings of the enquiry officer	Decision of the undersigned (disciplinary authority)
(i)	Demand and acceptance of Rs. 1465/- instead of actual fare Rs. 1315/- thus realization of excess illegal amount.	Proved	I agree to the finding of the enquiry officer because the charge stands duly proved by decoy passenger and independent witness during DA proceedings.
(ii)	Non-cooperation of vigilance team and swallowing of two currency notes of Rs. 500/- each to tamper the evidence.	Proved	I agree to the finding of the enquiry officer because it is substantiated by proving of charge article no.(i)
(iii)	Finding of Rs. 176/- excess in govt. cash as per ITC.	Proved	The plea of the C.O. is not tenable in circumstances. Hence it stands proved.



With giving regard to my decision on each article of charge of mentioned above, the charged official i.e. Sri Ramesh Kumar Gupta, Sr. Booking Clerk/Patna Jn. His Pay reduced to the initial level (lowest) for five years with cumulative effect.

8. The appellate order reads as follows:

**“Sub:Appeal of Shri Ramesh Kuamr Gupta,
Sr. BC/PNBE,
now at RJPB**

I have gone through the entire case file and appeal application filed by Shri Ramesh Kumar Gupta, Sr. BC/PNBE, now at RJPB. It is seen that he has been charged with committing Severe Irregularities. The charges framed against the charged official have been substantiated during the inquiry.

In the circumstances, I am of the opinion that the punishment given by the Disciplinary Authority is commensurate with the offence and the same is maintained.”

9. The order passed by disciplinary authority is cryptic, non- speaking and no reason has been assigned for passing order of punishment. Although when disciplinary authority agrees with the finding of inquiry officer, detailed order is not required but order passed must reflect application of mind and consideration of reply of the delinquent employee against the finding recorded by the inquiry officer. A Division Bench of this Court in the case of **Hassan Muzahid Vrs. The Bihar State Electricity Board & Ors** since reported in **2015(4) PLJR 435**, in Para 7 has held as following:



“7. The petitioner was dismissed by the Disciplinary Authority, after conducting enquiry. The only flaw pointed out by the petitioner and the one that weighed with the learned Single Judge, is that the Disciplinary Authority did not furnish any reason in support of his conclusions. It needs hardly any mention that the issuance of second show cause has a definite purpose to serve and that is the only occasion, or avenue where the delinquent employee can make an attempt to convince the Disciplinary Authority that the findings by the Enquiry Officer are not correct. He can also impress upon the Disciplinary Authority that the proposed punishment need not be awarded and he can plead extenuating circumstances. Since, the order passed by the Disciplinary Authority was passed without taking into account, the grounds pleaded by the delinquent employee in his reply to the second show cause, it certainly turns to be defective. Time and again, the Hon’ble Supreme Court held that such exercise tends to be violative of one of the facets of the principles of natural justice, and the opportunity given to an employee would be reduced to empty formality. We, therefore, do not find any basis to interfere with the view taken by the learned Single Judge in this behalf.”

10. The appellate order is also non-speaking and cryptic and the appellate authority has not dealt with the grounds raised by appellant in his appeal before the appellate authority. The



lacuna which has crept in the order of disciplinary authority as well as appellate authority cannot be rectified by revisional authority. The Apex Court in the case of **Director (Marketing) Indian Oil Corporation and Anr Vs. Santosh Kumar** since reported in **(2006) 11 SCC 147** has held as follows:-

“A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs.

11. For the reasons as stated above, the order dated 22.12.2016 passed in O.A. No. 504 of 2015 by the Tribunal as well as order dated 05.04.2013 passed by the Disciplinary



Authority, order dated 03.09.2013 passed by the Appellate Authority and order dated 29.04.2015 passed by the Revisional Authority are set aside and the matter is remanded to the Disciplinary Authority to pass a fresh reasoned and speaking order after considering the reply filed by the delinquent against the finding of Enquiry Officer, within three months from the date of receipt/production of a copy of the order passed by this Court after opportunity to both parties.

12. This writ application is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.10.2020
Transmission Date	NA

