

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 4847 of 2019

1. Union of India through the General Manager,
South Eastern Railway, Garden Reach,
Kolkata (W.B), Dist: West Singhbhum.
 2. The Divisional Railway Manager, South Eastern
Railway, Chakradharpur, Dist: West Singhbhum, Jharkhand
 3. Sr. Divisional Signal & Telecom Engineer South
Eastern Railway, Chakradharpur, Dist: West Singhbhum,
Jharkhand.
 4. Divisional Signal & Telecom Engineer South
Eastern Railway, Chakradharpur, Dist: West Singhbhum,
Jharkhand.
 5. The Assistant Divisional Signal & Telecom Engineer
South Eastern Railway, Tatanagar, Dist: East Singhbhum
Jharkhand
- Petitioners

Versus

Rani Kumari, Helper-1/Tata, under SSE(Sig)/TATA
Dist: East Singhbhum, Jharkhand.

..... Respondents

CORAM : The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mr. Justice Kailash Prasad Deo

For the Petitioners	: Mr. Mahesh Tewari, Adv. Mr. Abhishek Kumar Dubey, Adv.
For the Respondents	: Mr.A.K.Sahani, Adv. Mr. Anand Kumar Pandey, Adv.

05/05.03.2020 Heard learned counsel for the parties.

2. Aggrieved by the order of learned Central Administrative Tribunal, Railways have preferred this writ petition. Learned C.A.T by the impugned order dated 24th October, 2018 (Annexure-11) passed in O.A. No. 51/00065/2017 set aside the orders of punishment of reduction of pay in the same time scale Rs. 5200=20200/- plus Grade Pay Rs. 1800/- for a period of 3 years, which will have effect of postponing the future increment of her pay after its expiry (order dated 22nd June, 2010 passed by the Disciplinary Authority) as also the orders passed in appeal and revision dated 3rd June, 2015 and 17th January, 2017.

3. Applicant, who was appointed on compassionate ground on Class-IV post on the death of her father in harness, was proceeded for the following charges:

- (i) Applicant's mother was included as dependent in the year 2007 by her, whereas her brother Sri Om Prakash Mishra, Trackman had already included their widow mother Smt. Lalita Devi in

the pass account of 2007. As per pass rule, a dependent can enjoy the privilege pass as the dependent of one given employee. Applicant knowingly included her mother as dependent keeping the administration in dark.

- (ii) Applicant despite being fully aware that her mother Smt. Lalita Devi widow of Late Ram Sakal Mishra, Chowkidar under South Eastern (Tele)/ Con/CKP being a beneficiary of widow pass could not be included as a dependent in her pass account as she was entitled for complementary pass and had drawn such complementary pass in the year 2002 and 2004 was included by the delinquent in her pass account and the passes were drawn with the motive of misusing it.
- (iii) Applicant's mother, a railway pensioner having a pension above the ceiling limit was not entitled to be included in her pass, but she was included by the delinquent in her pass account with full knowledge in violation of the Railway Service Conduct Rules.

4. Disciplinary proceeding ended in the finding of guilt on all the three charges against the applicant. Enquiry report is dated 19th April, 2010 (Annexure-6). The Enquiry Officer found that three 2nd Class Privilege Passes were obtained on 24th January, 2008, 13th November, 2007 and 20th June, 2007 by the applicant, whereas her brother Om Prakash Mishra had also got issued two 2nd Class Privilege Pass on 27th February, 2007 and 20th August, 2007, both in the name of their mother. This was in contravention of the Railway Pass Manual, 1989, where no one can avail pass as dependent of more than one employee. These charges were found to be proved. Further delinquent could not produce any document to prove that her mother was not availing passes under WORE Scheme and that is why her name was included in her pass account as a dependent. The Enquiry Officer further found that as per the Family Pension admissible to the widow mother of the applicant as on 19th July, 1999 at the rate of Rs. 1600/-, she was entitled to family pension of Rs. 3096/ (pension + dearness allowance etc.). As per circular no. 31 of 2007 her admissible pension was Rs. 3096/- which is more than 2903 as on 1st July, 2006. This disentitled her to avail of 2nd Class Privilege Passes from the pass account of her daughter. It was also infringement of the pass rule. The Enquiry Officer, however, also took note that the

applicant had taken a plea that she was illiterate and 4th Grade employee, who was unaware of the Railway Rules. However, he recorded that every employee is expected to have knowledge of the service rules. Based on these findings, charges on all three articles were found to be proved against her. After second show cause notice and on consideration of her reply, the Disciplinary Authority ADST/TATA imposed the impugned punishment of reduction to initial pay in the same time scale for a period of 3 years which will have effect the postponing the future increment on its expiry and take effect immediately. The appellate and revisional authority did not interfere in the impugned punishment.

5. Learned C.A.T after considering of the case of the parties held as under:

“9. We have considered the arguments of the parties and perused the pleadings. From the letter dated 09.02.2007 written by Lalita Devi (widow mother of the applicant), it is very clear that the mother has been staying with the applicant. As such, the applicant has not indulged in any misconduct by availing the second class pass for her in the year 2007.

10. In view of the above, we quash and set aside the Annexure A/1, A/2 and A/3 orders. We also direct the respondents to restore the pay of applicant and release the consequential arrears within a period of three months from the date of this order. We, however, make it clear that the applicant shall not be entitled for any interest on such arrears.”

6. Railways being aggrieved has assailed the impugned order inter alia on the ground:

- i. That charges on all three counts stand established against the appellant.
- ii. The punishment of reduction to initial pay in the same time scale for a period of 3 years is the minimum which could be accorded as per the Railways Servant (Pass) Rules, 1986 (Annexure-B).
- iii. Neither were the findings of the Enquiry Officer vulnerable to challenge on any permissible grounds of judicial review nor was the penalty excessive in nature calling for interference on the doctrine of proportionality.

7. Learned Tribunal by a cryptic order has set aside the impugned punishment without discussing the case of the parties or holding any infirmity in the impugned order of punishment. Misuse of privilege pass is a serious misconduct in railways service and cannot be dealt with leniently. Therefore, the order may be set aside.

8. Learned counsel for the Railways has relied upon a letter dated 9th February, 2007 submitted by the widow mother of the applicant before the Divisional Railway Manger (Pass) making categorical statement to the effect that she has neither taken any complementary pass nor opted for it. She is dependent upon her daughter working under SSE (Sig)/Tata and she may be included as dependent widow in the privilege pass /PTO of her son.

9. Learned counsel for the applicant submits that in the first place the applicant was an illiterate Class IV employee appointed on compassionate ground and her mother was dependent upon her. It is further submitted that passes were not misused to fall within the mischief of the offending Rule, 1986. The Presenting Officer did not substantiate as to how her mother's admissible pension was above Rs. 2903 by any cogent proof. The question of rebuttal therefore did not arise. The passes though may have been issued on a misunderstanding in favour of the applicant, but none of the officials responsible for issuance of the pass have been proceeded against. The Enquiry Officer despite taking note of the ignorance of the applicant being an illiterate Class-IV compassionate appointee has held her guilty for violation of the rule. There is no deliberate violation of rule nor misuse of the passes have been proved. Despite furnishing a proper reply, the disciplinary authority failed to appreciate that applicant had not committed any such grave misconduct, which entails a major penalty of such nature which will have adverse effect on her pay and emoluments for rest of her service career. Therefore, learned tribunal rightly interfered in the order of punishment. The impugned order does not deserve any inference.

10. Learned counsel for the respondent has also relied upon Rule 14 of the Pass Rule which confers power on the General Manger to condone certain irregularity in availing of passes.

11. We have considered the submission of learned counsel for the parties in the light of the relevant materials pleadings on record and the rule position cited by them.

From the impugned order, it appears that learned Tribunal while interfering in the order of punishment has been guided by the fact that applicant's mother was dependent on her and was staying with her, as per her letter dated 9th February, 2007. As such, the appellant had not

indulged in misconduct by availing the 2nd Class Pass in the year 2007. We do not find any valid reason on the part of the learned tribunal to interfere in findings of fact in exercise of the powers of judicial review. The findings in the disciplinary proceedings are susceptible to interference under judicial review, if they are perverse or arbitrary and no person acting reasonably could have arrived at such a conclusion. The findings of the disciplinary authority are also vulnerable to be interfered if there is violation of statutory provisions or principles of natural justice. That does not appear to be the situation in the present case. However, learned Tribunal without recording any reason for interference in the findings of the disciplinary authority has straightaway set aside the order of punishment instead of remanding the matter for reconsideration.

12. Upon due consideration of the rival pleadings of the parties, we do not find that the findings in the enquiry proceedings are perverse or not based on materials on record or based on extraneous materials, neither do we find any violation of principles of natural justice or statutory rules. Inadequacy of materials in support of the finding is not open to the question under writ jurisdiction. Therefore, we do not find any reason to interfere in the findings of fact recorded in the disciplinary proceeding. However, it does not escape our notice that the applicant was a compassionate appointee on Class-IV post and is stated to be illiterate. Her mother had categorically stated that she was dependent upon her. The charges also were to the effect that the passes were drawn with a motive to misuse it. There are no findings of its misuse. Misuse has not been clearly defined under pass rule 1986. The disciplinary Authority has held that the passes was drawn with a motive to misuse but not stated that the passes were misused. In such circumstances, whether the findings should entail the nature of punishment imposed upon her or not and whether they are commensurate to the established charges is primarily within the domain of the employer. Therefore, considering the fact that she was illiterate Class IV compassionate appointee, upon whom her widow mother was dependent, we are of the considered view that the disciplinary authority should reconsider the question of quantum of penalty.

13. Having regard to the aforesaid reasons rendered in the facts and circumstances noted above, while interfering in the order of the learned

CAT in the manner and to the extent indicated hereinabove, we deem it proper to remand the matter to the Disciplinary Authority for reconsideration on the quantum of penalty by giving one opportunity to the applicant.

14. Accordingly, the writ petition is partly allowed in the manner and to the extent indicated hereinabove. I.A. No. 11874 of 2019 is closed.

(Aparesh Kumar Singh, J)

(Kailash Prasad Deo, J.)

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