

N THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 15644 of 2014

1. The Union Of India through General Manager, East Central Railway, Hajipur, District – Vaishali (Bihar)
2. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
3. The Additional Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
4. The Senior Divisional Operating Manager, East Central Railway, Samastipur (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).

... .. Petitioner/s

Versus

Surendra Mishra, Son of Ram Rajit Mishra Assistant Station Master, East Central Railway, Samastipur (Bihar), resident of Mohalla - Gandhi Nagar, Bhunidhara, Post Office - Dhurlak, District - Samastipur (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Abbas Haider, Advocate
For the Respondent/s	:	M/s M P Dixit, S K Dixit, S K Chaubey, Swastika, Advocates

CORAM: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 16-12-2021

Heard learned counsel for the parties.

2 The Union of India through General Manager, East Central Railway, Hajipur and other officials of Railway have filed the present writ application under Article 226 of the Constitution



of India assailing judgment and order dated 23.07.2013 passed in Original Application (for brevity, *OA*) No 666 of 2009 by the Central Administrative Tribunal (for brevity, *the Tribunal*), Patna Bench whereby the application filed by the sole respondent before the Tribunal under Section 19 of the Administrative Tribunal Act, 1985 has been allowed and the order of the Disciplinary Authority dated 09.01.2009 imposing punishment of reduction of pay to lower stage, i e, from Rs 13,610/- to Rs 13,090/- with postponing further increment, was imposed, has been set aside. The order of the Appellate Authority dated 19.11.2009 affirming the order of punishment has also been set aside by the said impugned order of the Tribunal.

3 The facts of the case, in brief, are that the respondent was working as an Assistant Station Master at Tharbitiya under East Central Railway. A departmental vigilance raid for trap was conducted on 12.10.2006 leading to initiation of a departmental proceeding against the petitioner with the issuance of charge sheet on 17.01.2007 on the allegation that the petitioner charged a sum of Rs 500/- for two train-tickets in place of Rs 478/- (Rs 239/- each) and, thus, he charged a sum of Rs 22/- more than the actual fare from one Ashok Kumar Shah Gond, who had acted as decoy. It was also alleged against him that he had not declared his



personal cash and further, a shortage of Rs 45/- in 'Government cash' was reported. It is noteworthy that Tharbitiya, being a small railway station, the Respondent, in addition to discharge of his duties as 'Assistant Station Master' was performing duties of commercial department including selling of tickets.

4 Based on the said vigilance raid, the charges against the Respondent were held to be proved in the departmental enquiry by the Enquiring Authority in its report accepting which the Disciplinary Authority passed the punishment order dated 09.01.2009, as noted above. The respondent's appeal also came to be dismissed by the Appellate Authority by order dated 19.11.2009. The Respondent approached the Tribunal, Patna Bench by filing aforesaid OA No 666 of 2009 assailing the order of Disciplinary Authority and the Appellate Authority. The Tribunal has recorded, in its impugned decision, that the trap was not held in accordance with the Rules prescribed therefor and, therefore, the trap itself was illegal based on which no penalty could be imposed. The Tribunal relied upon Supreme Court's decision in the case of *Moni Shankar -Versus- Union of India & Others*, reported in (2008) 3 Supreme Court Cases 484.

5 Mr Abbas Haidar, learned counsel appearing on behalf of the Union of India has submitted that the finding of the



Tribunal, based on non-compliance of the provision under Vigilance Manual dealing with departmental trap cases, is unsustainable for the reason that during the departmental proceeding, the witnesses were produced who had supported the allegation of demand and acceptance of more money against actual fare of tickets, by the petitioner and, therefore, the said finding could not have been held to be bad on the ground of any breach of the guideline laying down procedure for vigilance trap. Learned counsel for the petitioner has further submitted that the Guidelines, relied on by the Tribunal, was not invogue on the date when the raid was conducted and, therefore, the impugned order, being unsustainable, requires interference by this Court in the present proceeding. He has relied on a Supreme Court's decision rendered in the case of *Chief Commercial Manager, South Central Railway, Secunderabad & Others -Versus- G Ratnam & Others, (2007) 8 Supreme Court Cases 212*.

6 Mr M P Dixit, learned counsel appearing on behalf of the sole respondent has, on the other hand, has drawn our attention to a coordinate Bench decision of this Court dated 23.12.2016 rendered in the case of *Union of India & Others -Versus- Dilip Kumar Sinha (CWJC No 5922 of 2014)* to contend that in identical situation, relying upon Supreme Court's decision in the case of



Moni Shankar (supra), this Court refused to interfere with the order passed by the Tribunal. He has submitted that the order of the Tribunal, which was under challenge in the case of *Union of India -Versus- Dilip Kumar Sinha (supra)* has since been implemented by the respondents and, therefore, they cannot deny the same relief in case of the petitioner.

7 From perusal of the Division Bench decision in the case of *Union of India & Others -Versus- Dilip Kumar Sinha (supra)*, we find force in submissions made on behalf of the sole respondent. Paragraphs 8, 9 and 10 of the said decision are relevant and, therefore, are being reproduced herein below:

“8 Although there appears to be some force in the submission of learned counsel for the petitioner that decoy procedure is not exactly the same as the trap procedure, but considering the fact that in Moni Shankar case (supra), the Supreme Court has applied Paras 704 and 705 of the Manual to a case which was on an identical footing, this Court cannot take a different view in the matter. Thus, in view of the law laid down by the Supreme Court in Moni Shankar case (supra), this Court does not see any reason to interfere with the order of the Tribunal on the said point.

9 Once it is held that the impugned orders are bad on account of non-compliance of Paras 704 and 705 of the Manual, there would be no occasion to consider the other submission regarding the disciplinary authority or the revisional authority acting at the behest of another authority, but it goes without saying that any disciplinary authority while imposing punishment in the departmental proceedings, is



required to apply, being a quasi judicial authority, its independent mind in the matter and it cannot act at the behest of any other authority, whether superior or coordinate to it. Thus, the action of the disciplinary authority in passing the order dated 20.09.2005 compulsorily retiring the applicant-respondent at the behest of the Vigilance Department appears to be contrary to the established legal proposition which has been recognized even by the Railway Board in its Circular.

10 However, as we have said that since the entire proceedings have been held to be non est and bad on account of not following the procedure of Paras 704 and 705, the said issue does not really survive for consideration.”

8 Further, the Supreme Court’s decision in the case of G Ratnam (supra) relied on by Mr Abbas Haider has been considered by the Supreme Court in the case of Moni Shankar (supra). Relying on the decision in the case of Moni Shankar (supra), the Division Bench has passed the order in identical situation in the case of Union of India -Versus- Dilip Kumar Sinha (supra), as quoted above. We, therefore, see no reason why we should take a different view than the one taken by a co-ordinate Bench of this Court in the case of Dilip Kumar Sinha (supra).

9 Situated thus, considering the aforesaid facts and circumstances and rival submission on behalf of parties, we do not find any reason to interfere with the judgment and order of the Tribunal.



10 This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

