

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 700 of 2019

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1. Union of India through the Chairman, Railway Board,
Ministry of Railway, New Delhi.
2. The Member (Rolling Stock), Railway Board,
Ministry of Railway, New Delhi.
3. The Secretary, Railway Board, Ministry of Railway, New Delhi.
4. The General Manager, Eastern Railway, Kolkata.
5. The General Manager (Personnel), Eastern Railway, Kolkata.
6. The Finance Officer & Chief Accounts Officer,
Eastern Railway, Kolkata. --- --- Petitioners

Versus

Rabindra Kumar Sinha -- --- Respondent

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through Video Conferencing

For the Petitioners : Mr. Mahesh Tewari, Adv.
Mr. Gautam Rakesh, Adv.
For the Respondent : Mr. M.P. Dixit, Adv.

09/21.01.2021 Heard learned counsel for the petitioners/Railways Mr. Mahesh Tewari and Mr. M.P. Dixit for the applicant/respondent.

Learned Central Administrative Tribunal, Patna Bench (Circuit Bench, Ranchi) quashed the departmental proceedings initiated against the applicant vide charge memo dated 26th September 2018 on the ground that it has been issued by an incompetent authority since applicant was an officer in Group-A post in respect of whom the competent authority is the President of India or his delegate.

It is not in dispute that the impugned order (Annexure-1) dated 24th October 2018 was passed on the very next day of the filing of O.A. i.e. 23rd October 2018 and obviously no written statements were filed by the respondents, though the respondents railways were represented through their counsel.

Learned counsel for the petitioners Railways has referred to the Railway Servants (Discipline and Appeal) Rules, 1968, specifically Rule 6, 7, 8(2), 21 Sub-Rule(2) and Schedule-III to Rule 4 and Rule 7(2). According to him, as per Schedule-III read with Rule 7 Sub-Rule (2) and 21 Clause (ii) the General Manager, Railways is the competent authority to place an officer up to and including Selection Grade-A of junior administrative grade under

suspension and impose penalties specified in Rule 6(i), (iii), (iii-a), (iii-b) and (iv) and also institute major penalty proceedings against the railway servants. After conclusion of the departmental proceedings if the delinquent employee is liable for major punishment the authority competent to impose major punishment may be distinct and separate from the authority initiating disciplinary proceedings. Learned Tribunal without giving opportunity to the respondent railways, on the very next day passed the impugned order setting aside the disciplinary proceedings based on charges of grave misconduct. Therefore, the impugned order deserves to be set aside.

Learned counsel for the applicant Mr. M.P. Dixit has referred to the counter affidavit and stated that the memo of charge sheet was issued on 26th September 2018, four days before his superannuation on 30th September 2018 and relating to a period of alleged misconduct from May 2011 to June 2011 i.e. after 7 years of the alleged misconduct and at the fag end of the service. He has referred to the notification at Annexure-R/1 dated 6th May 2016 whereunder the President of India was pleased to appoint the officers named therein including the petitioner at serial 8, in different Zonal Railways to the post of Group-A / Junior Scale of Indian Railway Service of Mechanical Engineers (IRSME) w.e.f. 20th January 2016. Therefore, as per Rule 7(1) and also Schedule III the President of India is the competent authority to initiate proceedings for major penalty and impose penalty. He has placed reliance upon the case of *Union of India & Ors. Vs. B.V. Gopinath reported in (2014)1 SCC 351 paras 27 and 41* and submits that the Apex Court in the case of an officer of Indian Revenue Service while dealing with the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the disciplinary proceedings initiated under Rule 14 thereof held that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority is an unacceptable proposition. Such procedure would do violence to the protective provisions contained under Article 311(2). Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister. Learned counsel submits that in the instant case the power of the President has been delegated to the Minister concerned, but the memo of charge has been initiated by the General Manager who is not competent to do so. As such, the

disciplinary proceedings have been initiated by an incompetent authority. Moreover, applicant is not getting any pensionary benefits except provisional pension on account of initiation of such a proceeding at the fag end of his service, four days before the retirement. By the impugned order, learned Tribunal has given liberty to the respondents railways to take further action as per law in case they wish to proceed against the applicant in a departmental proceeding. The writ petition, therefore, deserves to be dismissed.

We have considered the submissions of learned counsel for the parties and also the grounds of fact and law urged on their respective behalf.

It appears that the original application was preferred on 23rd October 2018 before the learned Central Administrative Tribunal, Patna Bench (Circuit Bench at Ranchi) and on the very next day, the impugned order has been passed quashing the departmental proceedings. The applicant, besides taking the plea of incompetence of the authority initiating the departmental proceeding, also took other grounds on merits including delay in initiation of proceedings. Learned counsel for the petitioners Railways has placed reliance upon several provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 in support of his contention that the General Manager was the competent authority to initiate the proceedings, though upon conclusion of the proceedings major penalty may be imposed by some other competent authority depending upon the indictment and gravity of the charges proved. However, it appears to us that the learned CAT, while deciding the original application on the very next day in the absence of any written statement on the part of the respondent railways therein, failed to address not only the relevant applicable rules but other grounds and points of law/decisions urged on behalf of the applicant and respondents which were germane to determination of controversy.

For the aforesaid reasons, we feel that the matter deserves to be remanded to the learned CAT to take a fresh decision in accordance with law after opportunity to the respondent railways also to file written statement. It appears that the applicant has superannuated on 30th September 2018 and is getting provisional pension only. In those circumstances, while setting aside the order of the learned CAT dated 24th October 2018 passed in O.A. No.051/00871/2018, we direct the parties to appear before the learned CAT on 8th February 2021.

As informed by the learned counsel for the parties, the proceedings of learned CAT, Patna Bench including that of Circuit Bench, Ranchi are being heard online. In that case, parties should join proceedings online on the said date. If physical hearing is being held, parties should appear physically before the learned Tribunal. Let the instant order be communicated through FAX and email latest by 25th January 2021 to the learned CAT, Patna Bench (Circuit Bench, Ranchi) at its official email address apart from usual mode. Since the applicant has superannuated on 30th September 2018, learned Tribunal would endeavour to decide the matter preferably within a period of four months thereof after due opportunities to the parties.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

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