

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16075 of 2021

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.- Dighi Kalan, District- Vaishali (Bihar).
2. The General Manager, (Personnel) East Central Railway, Hajipur, P.O.- Dighi Kalan, District- Vaishali (Bihar).
3. The Divisional Railway Manager East Central Railway, Sonapur.
4. The Sr. Divisional Personnel Officer East Central Railway, Sonapur.
5. The Senior Divisional Operating Manager East Central Railway, Sonapur.
6. The Senior Divisional Finance Manager East Central Railway, Sonapur.
7. The Assistant Operating Manager East Central Railway, Sonapur.
8. The Station Superintendent East Central Railway, Narayanpur Anant.

... .. Petitioner/s

Versus

Chandra Shekhar Thakur Son of Late Mahadeo Thakur Ex- Substitute (Group-D), Under Station Superintendent, East Central Railway, Narayanpur Anant (Bihar), Resident of Village/Mohalla- Barbatta, P.O.- Sonapur, District- Saran at Chapra, Pin Code- 841101 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Singh, CGC
For the Respondent/s	:	Mr. Munna Pd Dixit, Advocate
		Mr. S.K. Dixit, Advocate
		Mr. Sanjay Kumar Choubey, Advocate
		Mrs. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-06-2022

Heard learned counsel for the parties.

2. In the instant petition, the petitioner-department has prayed for quashing of the order dated 29.07.2021 passed by Central Administrative Tribunal Patna Bench, Patna in O.A. No. 050/00854 of 2016. The respondent was subjected to



disciplinary proceedings and it was concluded in imposition of penalty of removal from service on 20/28 of October, 2016. In the meanwhile, he has attained the age of superannuation and retired from service in the month of September 2016. As on the date of removal from service on 20/28 of October, 2016, relationship of the master and servant ceases. In the result, imposition of penalty of removal from service on the petitioner was not warranted and it is without authority of law. Thus, the Respondent feeling aggrieved by the action of the petitioner-department, filed an O.A. No. 50/854 of 2016 and it was decided in favour of the respondent. Paragraph Nos. 6 & 7 reads as under :-

“6. It is noticed that the aforesaid submissions of application with respect to grant of benefit of pension to identically and similarly placed employee referred in the aforesaid cases, though they remained retired as Substitute. The said submission has not been rebutted by the respondents. Therefore, since the applicant is also similarly placed employee and undisputedly rendered more than 23 years of service as Substitute, he is also entitled to be considered equally with other substitute who has been granted benefit of pension as referred in aforesaid cited cases. Therefore, the objection raised by the respondents for not considering the long



service rendered by the applicant as qualifying service for the purpose of pension is not acceptable. It is noticed that in the case of Kali Nath Rai Vs. UOI and Binod Kr. Vs. UOI, the identical charges were levelled against the applicant and the respondents have not substantiated the said allegation and granted the benefit of pension by considering the long service and also considering the status of service qualified for grant of pension. In the present case, admittedly, the respondents have recalled the order of removal of the applicant which was issued on the basis of charges about improper entry in the department of the respondents. Since, the applicant has been exonerated from the charges levelled against him and also considering the fact that undisputedly he has rendered continuous 23 years of service, he is entitled to receive equal treatment like other identical employees referred hereinabove. For the said reason, the objection raised by the respondents is not tenable.

7. In view of above discussion, the claim of the applicant for grant of pension to him needs consideration. Hence, we direct the respondents to take appropriate decision for fixation of pension of the applicant within 60 days from the date of receipt of a copy of this order.”

3. The Respondent- Chandra Shekhar Thakur was subjected to disciplinary proceeding. It was concluded in



imposition of penalty of a removal from service on 20/28 of October, 2016, such imposition of penalty by the Disciplinary Authority is impermissible for the reasons that the imposition of penalty of a removal from service is under the Rules called. The Railway Servants (Disciplinary & Appeal) Rules, 1968 (For short “ Rules 1968”). Rule 3 relates to application of Rules 1968. Rule 3 reads as under.

“Application.- (1) These rules shall apply to every railway servant but shall not apply to-

(a) any member of the All India Services;

(b) any member of the Railway Protection Force as defined in the Railway Protection Force Act, 1957 (23 of 1957);

(c) any person in casual employment; and

(d) any person for whom special provision is made in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything



contained in sub-rule (1), the President may be order, exclude any class of Railway servants from the operation of all or any of these rules.”

4. Part III of Rules 1968 is relating to Penalties and Disciplinary Authorities. Rules 6 relates to penalties. Sub Rule (viii) of Rules 6 relates to removal from service. Extract of sub-Rule reads as under :-

“(viii) removal from service which shall not be a disqualification for future employment under the Government or Railway Administration”.

In the light of the aforesaid Rule position, the relationship of master and servant ceases in the month of September, 2016, since Respondent-Chandra Shekhar Thakur has attained the age of superannuation and retired from service. It is to be noted that against retired employee question of imposition of any of the penalties under Rule 6 read with Rule 3 of Rules 1968 is impermissible. Moreover Rule 1968 itself is not applicable.

5. Undisputedly, imposition of penalty of removal from service after attaining the age of superannuation and retirement from service, is without the authority of law.

6. In the result, there is no infirmity in the Tribunal's



orders dated 29.07.2019. Therefore, the petitioner-department has not made out *prima facie* case to interfere with the order of the Tribunal passed in O.A. No. 050/00854 of 2016.

7. Accordingly, the petition stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2022
Transmission Date	

