

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11663 of 2021

=====

Ajeet Kumar, Son of Late Triveni Mahato Resident of Village- Chakdaulat,
P.O.- Akhavishanpur, P.S.- Ujiyarpur, District- Samastipur- 848132.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali- 844101.
2. The General Manager (Vigilance) East Central Railway, Hajipur, Vaishali- 844101.
3. Additional Divisional Railway Manager Samastipur Division, East Central Railway, Samastipur- 848101.
4. Senior Divisional Commercial Manager Samastipur Division, East Central Railway, Samastipur- 848101.
5. Commercial Superintendent Sugauli Junction, East Central Railway, Sugauli, East Champaran- 845456.
6. Enquiry Officer O/o General Manager (Vigilance) East Central Railway, Hajipur, Vaishali- 844101.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Gautam Saha, Advocate.
For the Respondents	:	Mr. Praveen Kumar Sinha, Advocate with Mr. Rakesh Kumar Sinha, C.G.C.

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-11-2022

The petitioner has assailed the order of the Tribunal dated 01.08.2019 passed in O.A. No. 17 of 2016 on the file of Central Administrative Tribunal, Patna Bench, Patna (for short 'Tribunal').

The petitioner was initially appointed as a Enquiry-cum-Reservation Clerk on 23.07.2007. On 12.09.2011,



Vigilance officials consisting of four Inspectors entered the premises where the petitioner was working and they have seized materials like tickets and transactional material including four requisitions. They found that there were shortage of Rs. 632/- for which petitioner could not give proper explanation. Thus they have drawn proceedings called 'Joint Inspection Memo' which is a cyclostyle format. The aforesaid Memo has been signed by three persons including the petitioner. One of the column is relating to whether shortage/excess. The vigilance team have not identified whether Rs. 632/- is shortage or excess. Further, they have forwarded papers to Disciplinary Authority to take disciplinary action against the petitioner on the sole ground that there were shortage of Rs. 632/-. The actual cash should have been a sum of Rs. 9071/-, on the other hand he was in a possession of a sum of Rs. 8439/-. On this point, Article of charges were framed vide Annexure 1 which reads as under:

Article-1: During check he was found having Rs.632/- short with him in the Government cash. He produced Rs.8439/- against the DTC cash of Rs.9071/-. This amount was misappropriated by him for his self interest.

Article-2: 03 (Three) Tatkal JCRT's for JCO-14-09-2011 of sleeper class were



found on his counter without any claimant at that moment.

Article-3: The requisition slips dealt by Shri Ajit Kumar, ECRC/SGL were not properly endorsed with requisite details.

By the aforesaid acts of omission and commission, Sri Ajit Kumar, ECRC/SGL failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant, contravening Rules 3.1 (i), (ii) and (iii) of Railway Services (Conduct) Rules, 1966.

The Disciplinary Authority appointed Inquiring Officer to hold inquiry against the aforesaid charge. The Inquiring Officer has submitted report. Thereafter, the Disciplinary Authority proceeded with the formalities of issuance of show cause notice and a copy of the inquiry report etc. The Disciplinary Authority with reference to inquiry records proceeded to impose the penalty of reduction of pay to lower stage for a period of three years with cumulative effect.

Feeling aggrieved and dissatisfied with the Disciplinary Authority's order, he invoked remedy of appeal before the Appellate Authority. Appellate Authority affirmed the order of the Disciplinary Authority on 10.03.2014. Feeling aggrieved by the orders of the Disciplinary and the Appellate



Authority, petitioner invoked remedy under Section 19 of the Administrative Tribunal Act, 1985 in filing O.A. No. 17 of 2016 before the Tribunal. The Tribunal affirmed the order of the Disciplinary / Appellate Authority by passing order on 01.08.2019 in O.A. No. 17 of 2016. Hence the present petition.

Learned counsel for the petitioner argued the matter on 20th October, 2022. The order dated 20th October, 2022 reads as under:

“Pursuant to the earlier order dated 13.10.2022, Senior Divisional Commercial Manager, Samastipur Division, East Central Railway, Samastipur had to appear but due to lack of communication he is not present in the Court. Mr. Raj Kishore Sinha, Assistant Commercial Manager, E.C. Rly, Samastipur, Mr. Raushan Kumar, Sr. Commercial Clerk, Samastipur are present.

Heard the matter for sometime.

Learned counsel for the petitioner in support of challenge to the impugned order dated 01.08.2019 passed in O.A. No. 050/00017/2019 submitted that vigilance team is not accompanied by independent witnesses. The proceedings drawn by the vigilance team is also not supported by an independent witness which is mandatory in the light of Apex Court's decision in the case of ***Moni Shankar Vs. Union***



of India reported in **(2008) 3 SCC 484**. It is further contended that Mr. Vishwajeet who was appointed as inquiring officer and is the vigilance inspector in Vigilance Department, he should not have been appointed to enquire into the matter in respect of vigilance case. In support of the aforesaid contention he is relying on the decision of the Apex Court in the case of ***Union of India & Others Vs. Prakash Kumar Tondon*** reported in **(2009) 2 SCC 541** para 12. It is further submitted that charge on the petitioner is that there was shortage of sum of Rs. 632/- when vigilance team inspected the petitioner's premises. On the other hand, inquiring authority, disciplinary and appellate authorities have proceeded to hold that there were excess of Rs. 76/- when the inspection team conducted inspection of the petitioner's premises. Therefore, extraneous material has been taken into consideration. There is no determination in the enquiry conducted by the inquiring officer in respect of shortage of Rs. 632/-. Therefore, charge and finding given by the inquiring authority and subsequent higher authorities are contrary to charge framed by the disciplinary authority. In support of the aforesaid contention he has relied on decision of Apex Court in the case of ***M.V. Bijlani Vs. Union of India*** reported in **(2006) 5 SCC 88**. It is further submitted that the enquiry officer should have



summoned certain passengers in order to prove the alleged charge. Firstly, they have not been cited as witness. Unless and until they have been cited as a witness, question of summoning the passengers was not warranted. On the other hand, petitioner has not demanded before the inquiring authority to summon particular passengers. Therefore, aforesaid contention of the petitioner is not tenable. It is further submitted that petitioner has not been orally heard by the appellate authority. Such contention cannot be appreciated unless and until consideration of appeal under the relevant rules provides for oral hearing. Therefore, this contention is also not maintainable.

Learned counsel for the respondent-Railway is not in a position to counter the aforesaid contentions. Therefore, in order to give one more opportunity, re-list this matter on 10.11.2022. If the Railway counsel fails to address the argument on the next date of hearing, matter would be decided with the aforesaid issues are concerned.”

Today the matter is listed for counter argument on behalf of the respondent-Railway authorities. The respondent-Railway counsel tried to distinguish nature of proceedings drawn against the petitioner to contend that independent witnesses is not warranted in respect of preventive check



procedure, therefore, the cited decision on behalf of the petitioner namely **Moni Shankar Vs. Union of India** cited **supra** is distinguishable and the same is not applicable. It is further submitted that Mr. Vishwajeet, Vigilance Inspector was working in the General Administration and he was not a Vigilance Inspector. In support of the aforesaid contention, no material information has been placed on record. On the other hand, it is reiterated that Mr. Vishwajeet was not a Vigilance Inspector.

It is further submitted that there is no infirmity in the order of the Disciplinary and Appellate Authority to the extent that the alleged charge is relating to excess amount found with the petitioner. Therefore, there is no infirmity. It is also submitted that there is no infirmity in the order of the Tribunal. The Tribunal has taken note of material information.

Heard the learned counsel for the respective parties.

The petitioner was subjected to disciplinary proceedings on the alleged charge that during surprise inspection by the vigilance team, they found shortage of Rs. 632/-. Perusal of the Joint Inspection Memo, it is not specific as to whether it is shortage of Rs. 632/- or excess for the reasons that it is cyclostyle format. Irrelevant material is required to be struck



down by the vigilance team to that effect. There is a non application of mind. The Tribunal has committed error in not appreciating the contention of the petitioner that Vigilance Inspector cannot be appointed as an Inquiring Officer in respect of vigilance matter whereas Mr. Vishwajeet who was appointed as a Vigilance Inspector as is evident from Annexure- 4, the same was not countered by the respondent-Railway authorities with the material information that he was not a Vigilance Inspector. On the other hand, it was contended that he was working in the General Administration. In the absence of material information whether Mr. Vishwajeet was working in the General Administration, the contention of the Railway- Respondents cannot be accepted. Further, it is to be noted that independent witnesses were to support the Joint Inspection Memo in the light of apex court decision in the case of **Moni Shankar (supra)**. The Railway counsel's submission is that so far as preventive check procedure is concerned, no independent witness is warranted. In this regard, no material information has been placed on record so as to distinguish procedures/proceedings so as to contend that **Moni Shankar decision** is not applicable to the case in hand. Therefore, in the absence of independent witness to the Joint Inspection



Procedure, we have to take note of **Moni Shankar** decision that independent witness is warranted.

Perusal of the records, it is evident that there is total non application of mind by the vigilance team in not indicating whether Joint Inspection Memo is in respect of shortage of Rs. 632/- or excess amount. Perusal of Joint Inspection Memo, it is not crystal clear as to whether is it shortage or excess. At the same time, charge memo cited (supra) reveals that charge is that the petitioner had shortage of a sum of Rs. 632/-. When the Inquiring Officer has given finding that there were shortage of Rs. 632/-, whereas the Disciplinary and Appellate Authority have taken note of that there were excess amount of Rs. 76/-, in other words, as if charge is relating to excess amount of Rs. 76/- was found with the petitioner. These issues have not been taken note of by the Tribunal while deciding O.A. No. 17 of 2016. Therefore, order of the Tribunal dated 01.08.2019 passed in O.A. No. 17 of 2016 stands set aside. Consequently, impugned orders of the Disciplinary and the Appellate Authority order dated 23.07.2013 (Annexure-15) and 10.03.2014 (Annexure-17) stands set aside.

Writ petition stands allowed and accordingly disposed of.



The official respondents/competent authority is hereby directed to restore the petitioner’s pay. He/she is hereby directed to calculate difference of amount and the same shall be released within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.11.2022
Transmission Date	N.A.

