

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6395 of 2016

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Kundan Kumar Srivastava Son of Late V.P. Srivastava, Office Superintendent (Personnel) Office of the Senior Divisional Personnel Officer, East Central Railway, Danapur District - Patna Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager Personnel, East Central Railway, Hajipur, District - Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District - Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O. - Khagaul, District-Patna (Bihar)
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District – Patna (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Adv. Mr. S.K. Dixit, Adv. Mr. S.K. Choubey, Adv. Mr. Swastika, Adv.
For the Respondent/s	:	Mrs. Kanak Verma, CGC

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

Date : 07-07-2022

The petitioner has moved this Court against the order dated 29.01.2016 read with order dated 02.03.2016 passed by the Central Administrative Tribunal, Patna (*henceforth for short* ‘the Tribunal’) in O.A. No.808 of 2013 and R.A. 050/00021 of 2016 respectively and sought following reliefs:

“ i. For issuance of Writ in the nature of Certiorari for quashing/setting aside the Order



dated 29.01.2016 together with Order dated 02.03.2016 as contained in Annexure-12 & 13 passed by the Learned Central Administrative Tribunal, Patna Bench, Patna herein after Central Administrative Tribunal in Original Application No.808 of 2013 and RA/050/00021 of 2016 respectively where under the instant Original Application and Review Application both have been dismissed beyond the issue/pleading/points involved in the instant Original Application which is totally unjust, illegal, arbitrary and without application of judicious mind. Thus the impugned orders are liable to be set aside;

ii. For issuance of Writ in the nature of Certiorari for quashing/setting aside the Order dated 09.12.2013 issued by Respondent No.3 as contained in Annexure-9 together with Show Cause Notice dated 01.11.2013 issued by Respondent No.3 as contained in Annexure-7;

iii. For issuance of an appropriate writ(s)/order(s)/direction(s) in the nature of Mandamus commanding the Respondents to reinstate the Petitioner in service henceforth with all consequential benefits together with arrears of salary, statutory interest thereupon;



iv. For any other appropriate relief(s) for which the Petitioner may be entitled to be granted.

2. The matrix of facts giving rise to the present writ petition is/are as follows:

3. The petitioner, an employee of the Indian Railways, at the relevant time was working as an Office Superintendent (P), East Central Railway, Danapur under the Senior Divisional Personnel Officer. On 15.07.2008, major penalty charge sheet was issued against him stating as under:

Major Penalty charge sheet against Sri Kundan Kumar Srivastav OS II/P.Br./DNR

On receipt of representation from Sri Parsuram Singh, Ex.TTE/Bihia/Bhojpur raising doubt on promotion of Sri Rambachan as PWS/Raghunathpur and involvement of DC. of personnel Branch Sri K. K. Srivastav. A thorough enquiry was made and found that Sri Rambachan was sent to ZTC/Bhuli for promotional training course of PWS and he had been declared fail in all the promotional training course commenced from (i) 31.12.01 to 14.02.02 (ii) 23.08.02 to 11.10.02 & (iii) 05.11.03 to 01.01.04 as evident from the result sheet issued by the principal ZTC/Bhuli. He continued to be paid full pay and allowances of PWS in Sc.Rs.4500-7000/- as per SE/P.Way/Ara's letter No. E/CL/III dated 16.06.04 though his pay should have been discontinued from the date of declaration of 1st promotional course result which caused loss of a lot of revenue of Rly. and utilisation of a failed candidate on a safety post taking



risk of thousand of passenger traveling in that area. Further on the basis of forged document (Xerox copy of result issued by Principal ZTC/Bhuli) reflecting Sri Ram Bachan pass in the result commenced from 05.11.03 to 01.01.04 altering his total marks obtained from 18 to 78. A note was put up by Sri K. K. Srivastva, OS-II to the competent authority and he got Sri Rambachan posted as PWS in Scale Rs. 4500-7000/- under SE/P.Way/ARA. It reflects ILL-motive of Sri Srivastav which resulted in loss of govt. revenue in payment of salary to Sri Rambachan from the date of declaration of 1st Fail result and taking risk of thousand of passengers in the area Sri Rambachan is presently posted.

4. On 24.07.2008, the petitioner filed his reply asking for documents. On 07-08-2008, certain documents were provided to him. This followed interim reply preferred by the petitioner on 18.08.2008.

5. On 16.09.2009, the petitioner received inquiry report asking for his representation/submission on it (Annexure-4 to the writ petition). As per the inquiry report, the charges against the petitioner are as under:

(i) one Ram Bachan who was selected for PWS and before his promotion to the said post was required to pass the training examination but he failed the examination securing only 18 marks. However, despite being failed, the



petitioner facilitated his continuance with the PWS (Permanent Way Supervisor) related work. Petitioner accepted the said charge that it was not in accordance with Rules;

(ii) he manipulated the result of Ram Bachan putting up the note showing him pass (stating that he got 78 marks) and accordingly got the approval of the Seniors. According to the inquiry officer, the document clearly show manipulations. The defence of the petitioner was that the mark-sheet was provided by the Computer Section and he had simply put up the note. According to the Inquiry Officer, the petitioner was the first person to put up the note showing him pass in the result and he cannot get himself absolved of it;

(iii) the petitioner preferred detailed reply on 18-09-2009 denying the charges with the prayer to exonerate him from the said charges framed against him.



6. Finally on 10.06.2013, the Senior DPO-cum-Disciplinary Authority imposed minor punishment on petitioner which read as follows:

Punishment Notice

Sri Kundan Kumar Shrivastava,
Office Supdt. (Personnel)/E.C. Railway/Danapur.

Sub:-Major penalty charge sheet
No.E.O./Clerk/DA/2008 dated 15.07.2008.

Ref:-Your reply dated 18.02.2009.

I have gone through SF-5, the reply submitted by C.O. the Inquiry report etc. and observe as under:-

The forged result in which marks / remarks / gradation columns have been altered bears almost complete resemblance with the true result. Marks column when seen with utmost care, draws some suspicion. But when the letter is seen by higher officials and marked to the dealer, such omission is possible. However, the C.O. should have been more vigilant so as to avoid such omission.

For this act of omission, his next increment is stopped for 6 months without cumulative effect (NC).

Under rule 18 of Railway Servants (DA) Rules, 1968, appeal against these order lies to Addl. Divisional Railway Manager, E.C. Railway, Danapur provided:-

1. The appeal is submitted through proper channel within 45 days from receipt of this order, and
2. The appeal does not contain improper or disrespectful language.

Sd/-
(Manish Chandra)
Sr. DPO/ECR/DNR
&
Disciplinary Authority



7. When things stood thus on 07.08.2013, the office of the General Manager (Vigilance) issued letter observing that although major penalty charge sheet was issued against the petitioner, only minor punishment was imposed by the Disciplinary Authority.

8. On 01.11.2013/14.11.2013, the Revisional Authority issued show-cause to the petitioner herein to enhance punishment from minor to major penalty under Rule-25 of the Railway Servant (D&A), Rules 1968 (henceforth for short' the Rules').

Show Cause Notice to

Sri Kundan Kumar Srivastava, Personnel/DNR.

For Enhancement of Punishment.

[Rule 25 of Railway Servants (D&A) Rules, 1968]

Sri Kundan Kumar Srivastava, office supdt. (Personnel)/Danapur was served a Major Memorandum of Charge sheet No. EO/Clerk/DA/2008 dated 15.07.2008 for charge mentioned in the Annexures to the said Charge Memorandum.

The Disciplinary Authority cum- Sr.DPO/DNR has imposed a penalty of stoppage of increment for 6 months with non-cumulative effect vide NIP No. E.O Clerk/DA/2008 dated 10.06.13. This punishment does not seem to be adequate as charge was serious in nature.

Under exercise of Powers vested by Rule 25 of Railway Servant D&A Rules 1968, I have reviewed the case and observed as under:

This a clear case of allowing promotion based on fake and forged document Sri K. K. Srivastava was the dealing clerk of the case and he initiated the case of



promotion of Shri Ram Bachan on the basis of forged result. APO-II /DNR's report dated 04.07.08 had also found him responsible for dereliction of duty.

Hence, I do not agree with the decision of Disciplinary Authority Communicated to Sri Srivastava for the reasons mentioned above.

I propose to enhance the punishment and impose the penalty of "compulsory retirement".

This may be treated as Show cause notice to Sri Kundan Kumar Srivastava (C.O.) who is directed to submit his clarification, if any within 15 days from receipt of this Show-Cause Notice. Non receipt of final defence within stipulated period will mean that Sri Srivastava has nothing to say in his defence and a decision will be taken as exparte.

9. The petitioner filed reply on 28.11.2013 reiterating his defence that was made earlier before the Disciplinary Authority. The Revisional Authority thereafter took up the matter on 09.12.2013 and imposed major punishment or compulsory retirement on petitioner. Divisional Railway Manager, Danapur -cum- Revisional Authority order reads under:

Punishment Notice.

**Sri Kundan Kumar Shrivastava,
Office Supdt (Personnel)/E.C.Railway/Danapur.**

**Sub-Punishment Notice No E.O/Clerk/DA/2008
dated 10.06.2013.**

Ref- Your reply dated 28.11.2013.

I have gone through the defence dated 28/11/2013 of charged official and all connected papers on record and had applied my mind. The position against various points raised by charged official in his defence dated 28/11/2013 is as follows:



1. The show cause notice was issued by undersigned, based on the facts of the case and without any pressure from any quarter.

2. The charged official being the initiating clerk, must have verified genuineness of the certificates, on the basis of which wrong promotion has been given, jeopardizing entire safety of train operations.

3. List of witnesses is not mandatory in charge sheet to prove charges.

4. Though APO-II/DNR's report dated 04/07/08 has been mentioned in show cause notice. But this no way either alters the charges nor the relied upon documents on which charge sheet has been issued.

5. The Enquiry has found him responsible for failure to detect forgery with the result of ZTC/Bhuli.

6. The revision of this DAR case has been necessitated, based on the review of undersigned which is fully as per DAR rules.

After considering all the points on record, I hold charged official responsible for lapse in putting up forged examination result of ZTC/Bhuli. The charged official has initiated the case of promotion of Sri Rambachan, based on the forged result. This was a serious lapse and it resulted jeopardizing safety of train operations. Hence the charged official is given Compulsory retirement.

(N. K. Gupta)
Divisional Railway Manager/DNR
&
Revisioning Authority

10. Aggrieved by the aforesaid decision of the Revisional Authority, the petitioner preferred O.A. No.808/2013 before 'the Tribunal'. The respondents appeared in the matter and contested the said petition. The main plea taken up by the respondent authorities were that:

(i) there is provision in the Discipline and Appeal Rules for suo motu revision



by the Revisional Authority when there is no appeal;

(ii) there is no dispute that Ram Bachan had secured only 18 marks and had failed in the exam, but the petitioner not only facilitated his continuous; he also put up note showing 78 marks to him, thus he cannot escape punishment for placing wrong promotional note on the basis of forged document;

(iii) admittedly, the petitioner did not challenged the original order of the Disciplinary Authority dated 10.06.2013 and once he failed to prefer appeal under Rule-18 of 'the Rules', he cannot challenge the said order in suo motu revision taken up by the Revisional Authority.

(iv) thus, having accepted the charges framed against him by the Revisional Authority was justified in imposing the punishment of compulsory retirement.



11. 'The Tribunal' heard the matter and vide its order dated 10.06.2013 held that the non-challenge of order dated 10.06.2013 shows that the matter stands proved. It further held in para-7 of the order as under:

"7. There is another important limb need to be addressed in this OA. Admittedly, the applicant did not challenge the original order of punishment passed by the Disciplinary Authority dated 10th June, 2013 [Annexure-A/7] under which his next increment for six months without cumulative effect was stopped. Once the applicant did not prefer any appeal against the said order of Disciplinary Authority under Rule 18 of Railway Servants [Discipline & Appeal] Rules, 1968, he cannot challenge the said order in a suo motu revision initiated by the Revisional Authority. There is positive finding of the Disciplinary Authority that the result was forged in which marks have been altered and the charged official should have been more vigilant to avoid such omission. So, the applicant was satisfied about his delinquency and involvement in the alleged forged mark-sheet and rather alteration of the marks secured by an employee for which he did not challenge the same before the Appellate authority. So, the only point the delinquent employee can agitate in the Revision so also in this OA is about adequacy/inadequacy of the penalty. So, once the delinquency is proved, the moot question that comes for consideration is- Whether an order of compulsory retirement



passed by the Disciplinary Authority was justified under the circumstances ?

Since forging of mark-sheet at the level of the present applicant was not challenged by him in the appellate forum, the said matter stands conclusively proved. Hence, once there is forging of mark-sheet in order to give financial benefit to an employee, which he is not legally entitled, such a matter cannot be ignored or brushed aside as a minor delinquency. This dereliction in duty on the connivance of the dealing section, which resulted in granting promotion on the basis of fake/forged document, has to be seriously viewed, which the Disciplinary Authority has concluded in the instant case. According to the Revisional authority, since the enquiry found the applicant responsible for failure to detect the forgery and found him further responsible for lapse in putting up a forged examination result, and as he initiated the case of promotion of one Ram Bachan based on forged result, it was rightly found to be a serious lapse, which resulted in jeopardizing safety of train operation. In such backdrop, the order of compulsory retirement neither can be underestimated nor can be said to be excessive. Since, there is nothing wrong in the approach of the Revisional Authority, no interference is called for by this Tribunal. Hence ordered.”



12. Thus, 'the Tribunal' vide the aforesaid order dated 29.01.2016 held that the O.A. being devoid of merit and is dismissed.

13. The petitioner has now preferred the present writ petition. The main argument put forward by the petitioner is/are that:

- (i) it is against the provisions laid down under the Rules, 1968;
- (ii) it is against the principle of natural justice and non-application of mind on the part of the respondent authorities;
- (iii) non-supply of the documents demanded by the petitioner makes the order contrary to the established law;
- (iv) the order is non-speaking order, cryptic and sketchy and against the directives of the Railway Boards as well as different pronouncements of the Hon'ble Courts.

14. Per-contra the arguments advanced by the respondent was that the petitioner was provided all the relevant documents. It was further argued that the show-cause dated



18.09.2009 submitted by the petitioner nowhere complains about the non-supply of the document. Further, the petitioner having chosen not to prefer any appeal against the order dated 10.06.2013 passed by the Disciplinary Authority virtually he had accepted the charges framed against him.

15. Once the Revisional Authority reviewed the matter in exercise of power vested by 25 of 'the Rules', he was duly noticed to which he submitted a detailed reply on 28.11.2013. It was only after considering the defence put forward by the petitioner and after perusing all the papers on record that the Revisional Authority passed the order dated 09.12.2013 which need no interference.

16. We have gone through the materials on record and heard the contesting parties at length. It is an admitted fact that the said Ram Bachan having secured only 18 marks in PWS training examination had failed but was allowed to continue on the said post by the petitioner thus putting the life of the passengers at risk. Not only that he was the first person who put up the note showing the marks secured by Ram Bachan as 78, as a result where of it got approval by the Superior Authority.

17. It is to be noted herein that earlier the petitioner was served with the major penalty charge sheet on 15.07.2008. The



Disciplinary Authority in its order dated 10.06.2013 although found the petitioner to be guilty of misconduct chose not to pass any order under major penalty proceeding and instead minor penalty of withholding of one increment for six months without cumulative effect was imposed. The petitioner chose not to prefer any appeal and the Revisional Authority upon going through the records in line with Rule-25 of 'the Rules' took up the matter and issued show-cause to the petitioner. The petitioner duly filed his reply/show-cause only whereafter the order in question was passed.

18. So far as the contention put forward by the counsel for the petitioner questioning the power of the Divisional Railway Manager, Danapur-cum-Revisional Authority to review the matter by stating therein that only the President have the power to review. It is necessary to reproduce Rule-25 of 'the Rules', which read as follows:

PART-VI

REVISION AND REVIEW

25. Revision -

(1) Notwithstanding anything contained in these rules -

- (i) the President, or
- (ii) the Railway Board, or
- (iii) the General Manager of a Railway Administration or an authority of that



status in the case of a Railway servant serving under his control, or

(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or

(v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control –

may at any time, either on his or its own motion or otherwise, call for the records of any

inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such orders as it may deem fit:

Provided that –

(a) no order imposing or enhancing any penalty shall be made by any revising



authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after -

- (i) the expiry of the period of limitation for appeal; or
- (ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.



(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case

and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by -

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) -

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.



Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders. reckoned from the date of issue of the appellate orders.

19. Thus, the contention put forward by the petitioner's counsel that the Divisional Railway Manager-cum-Revisional Authority do not have the power to review is without any merit and fit to be rejected.

20. This Court in cases of disciplinary proceedings has to see as to:

(i) whether the same has been inconsistent with the rules of natural justice or not;

(ii) whether there has been any violation of statutory rules prescribing the mode of inquiry or not and;

(iii) whether the conclusion or finding arrived at by the Disciplinary Authority is based on any evidence or not.

21. It is important to note here that the Apex Court in **B.C. Chaturvedi Vs. Union of India & Ors.** reported in (1995) 6



SCC 749 held that *“the Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the said evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”*

22. Recently, the Apex Court in the case of **Union of India & Ors. Vs. Dalbir Singh** reported in **(2021) 11 SCC 321** held that *“burden of proof in departmental proceedings is not of proof beyond reasonable doubt as in criminal trial but probabilities of misconduct.”*

It thus reiterated that *“interference by High Court justified only if finding of disciplinary authority is based on no evidence or infraction of rules/regulations or violation of principles of natural justice.”*



23. We have gone through the entire facts. The respondents were well within their rights to review the order after the expiry of the period of limitation for appeal as per 'the Rules'. Further, under Rule-25 of 'the Rules', the Divisional Railway Manager, East Central Railway, Danapur was fully competent to review the matter and issue show cause notice upon the petitioner for enhancement of punishment. The petitioner submitted his show cause only whereafter the order in question was passed.

24. 'The Tribunal' in its order dated 29.01.2016 rightly held as follows:

"7. ... According to the Revisional Authority, since the enquiry found the applicant responsible for failure to detect the forgery and found him further responsible for lapse in putting up a forged examination result, and as he initiated the case of promotion of one Ram Bachan based on forged result, it was rightly found to be a serious lapse, which resulted in jeopardizing safety of train operation. In such backdrop, the order of compulsory retirement neither can be underestimated nor can be said to be executive. Since, there is nothing wrong in the approach of the Revisional



Authority, no interference is called for by this Tribunal. Hence ordered.

8. The OA being devoid of merit, is dismissed. No costs.”

25. Taking entire facts into account, this Court does not find any error in the order dated 29.01.2016 read with 02.03.2016 passed by the Tribunal in O.A. No.808 of 2013 warranting interference.

26. The writ petition being devoid of merit is hereby dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.07.2022
Transmission Date	NA

