

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4211 of 2017

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S. S. A Rizvi Son of Late Ahmad Hussain Rizvi Resident of Navgharwa
Sultanganj Post Mahendru, District - Patna, Ex Assistant Station Master, East
Central Railway, Danapur, Post - Khagaul, District - Patna Bihar.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Divisional Railway Manager, East Central Railway, Danapur.
3. The Senior Divisional Operating Manager, East Central Railway, Danapur.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
5. The Senior Divisional Financial Manager, East Central Railway, Danapur
Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Chaubey, Advocate
For the Respondent/s	:	Mr. Radhika Raman, CGC
		Mr. Awadhesh Kumar Pandey, Sr. Counsel

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

Date : 07-07-2022

Heard learned counsels for the parties.

2. Petitioner joined service as Assistant Station Master
(ASM) on 15.07.1975. He was subjected to disciplinary proceedings
on the alleged charge that he remained unauthorized absent, he was
charge sheeted on 22.07.1986 and it was concluded in imposition of
penalty of removal from service on 07.09.1987 while giving



retrospective effect from 17.03.1983, probably the date of his absence from 17.03.1983.

3. Feeling aggrieved and dissatisfied with the order of removal dated 07.09.1987 he has exhausted remedy of appeal and revision wherein he has suffered orders. In other words, removal order has been confirmed by both appellate and revisional authority. Petitioner feeling aggrieved by all the three orders of the authorities dated 07.09.1987, 09.02.1988 and 29.09.1988 respectively moved before the Central Administrative Tribunal in O.A. No. 10 of 2006, the Tribunal has not appreciated delay and laches on the part of the petitioner insofar as questioning the orders of the year 1987 and 1988 in the year 2006, however, order dated 18.07.2012 passed in O.A. No. 10 of 2006 attained finality and reads as under:

“This application is filed against the order of removal from service dated 07.09.1987 passed by disciplinary authority, order of appellate authority dated 09.02.1986 and order of revisional authority dated 29.09.1988.

2. The reliefs prayed are as follows:

[i] That your lordships may graciously be pleased to quash and set aside the order of removal dated 7.9.1987 [Annexure-A/2] order of appellate authority dated 09.02.1988 [Annexure-A/7] and order of revisional authority dated 29.09.1988 [Annexure-A/12] respectively.

[ii] That the respondents be further directed to re-instate the applicant in service from the effective date



of removal with all consequential benefits including arrears of salary etc, together with 20% interest.

[iii] That the respondents be further directed to pay the salary of applicant for the suspension period, if any, not paid.

[iv] Any other relief or reliefs including cost of the proceeding be allowed in favour of the applicant.

3. The legal lacunae in the conduct of disciplinary proceedings which the applicant enumerated in the OA and highlighted in his appeal filed on 21.10.1987 before the DRM, are the following:

[i] No opportunity was given to reply to the findings of the Enquiry Officer as the findings dated 24.08.1987 were supplied along with the penalty order dated 07.09.1987.

[ii] Penalty order dated 07.09.1987 imposing penalty w.e.f. 17.03.1983 is retrospectively and is a non speaking one..

[iii] No material witness were examined.

[iv] Presenting Officer was not appointed.

[v] Appellate order is a cryptic, non speaking one without application of mind.

4. It is thus alleged that the entire proceedings are vitiated for being conducted in blatant violation of principles of nature justice as well as RS [D&A] Rules.

5. It is also alleged that the Revisional Authority has disposed of the revision application dated 12.05.1988 on 29.09.1988 but it was never communicated to the applicant. However, he procured the same in 2005, and that it is also a non speaking order.

6. The admitted facts which emerge from the written statement filed by the respondents are as follows:



"In the year 1975. the applicant was appointed as ASM and he joined the post on 15.07.1975 at Danapur. The applicant absented himself from service unauthorizedly since 17.08.1983 without information to the authority concerned for which an explanation was called from him vide letter dated 24.03.1985. The applicant sent his reply after 18 days mentioning therein reason of his unauthorised absence as illness of his father which was not acceptable as per rules. He again sent his application regarding his own illness for the period between 21.04.1985 to 08.12.1986 with certificate of private medical practitioner however, he did not turn up physically. Thereafter, major charge sheet was issued to him for his unauthorised absence under the provisions of the Railway Servant [Discipline & Appeal] Rules, 1968 and an enquiry was set up and enquiry officer was appointed. The applicant filed his written statement denying the charges but the same was not found satisfactory and departmental enquiry proceeded. The fact findings enquiry came to the conclusion that charges levelled against the applicant were proved and thus the enquiry officer submitted his report to Disciplinary Authority who was pleased to award punishment of removal from service to the applicant after completing legal formalities in accordance with law vide his order dated 07.09.1987 It is further stated that - "It is worthwhile to mention here that as admitted by the applicant in the present original application he had



preferred appeal and revision also against the said order of punishment dated 7.9.1987 which were also rejected vide order dated 9.2.1988 and order dated 29.9.1988 respectively passed by the authorities concerned. Now the applicant in spite of the knowledge of orders above said has filed this original application in the year 2006 i.e. after a gap of about 18 years and that too without any application for condonation of delay. At present it is very difficult to trace out the relevant records which are being destroyed at the relevant intervals. The maneuvers adopted by the applicant is delay in filing the case which is based on flimsy grounds and being hopelessly time barred the present OA is not maintainable on the ground of inordinate delay and laches alone".

7. Heard the learned counsel of both the sides and perused the documents.

8. It is noticed that with regard to procedural lacunae the respondents have nothing to controvert. However the limitation factor is fatal. The applicant's counsel has submitted that as the matter stands admitted on 05.09.2011 without the question of limitation being kept open, it cannot be a ground for rejection of his prayer at the hearing stage. The applicant was allowed to cite decisions which can come to his aid, but he has failed..

9. On the question of delay in challenge of proceedings it has been stated that the applicant was mentally ill from 1994 to 1995 and in evidence thereof, some medical certificates are annexed, which goes to show that the applicant was in fact undergoing treatment



at different spells from 1990 to 2005 at Manovikas Kendra Ranchi and under a reputed doctor namely Dr. V.N. Chaudhary, Medical Officer, RMA Kanke, Ranchi. He was declared fit on 18.06.2005. The proof of service of revisional order is not annexed by the respondents and the claim of the applicant to have procured the document in 2005 is also evasively denied. The condonation of delay of which is sought vide MA No. 10./2006 is on the ground that the applicant was mentally sick from December, 1995 to 18.06.2005 which is a good ground for condoning the delay in filing the OA. Since in fact the matter merits consideration few of the serious violation substantive and procedural law. Hence, the delay in filing the O.A. is condoned and the M.A. filed for the purpose is allowed.

10. Coming to the merits of the matter, it is noticed that the applicant had preferred an appeal on 21.10.1987 before the DRM (as advised in the penalty order] wherein he detailed the legal lacunae in conduct of proceedings. But surprisingly it was disposed of on 09.02.1988 by the Addl. DRM in a one line order which does not indicate application of mind on the issues raised in the appeal by the Appellate Authority, who is the DRM. The revision petition dated 12.05.1988 was filed before the GM, and after prolonged communication with a request to dispose of the same, the applicant was not disclosed the fate or outcome of his revision petition. Such communication up to October, 1994 have been annexed.

11. Rule 22[2] of RS [D&A] Rules and the Railway Board's order dated 03.03.78 mandates that the



disciplinary authority should invariably pass a speaking order which is wanting here.

12. Even if we allow concession on the non furnishing of enquiry report, we notice that the penalty order is a non speaking one, which is unconstitutional and illegal.

13. In view of the serious procedural lapse as noticed and allegations of violation of substantive provisions and procedural law and constitutional provisions which are not disputed, the penalty order is quashed and as a natural consequence the appellate and revisional orders are quashed. The matter is remanded back to the Disciplinary Authority i.e. the Divisional Operating Suptd. to pass a reasoned and speaking order after giving an opportunity to the applicant to submit his representation on the findings of enquiry officer, and to pass orders afresh and take a decision on the imperative nature of absence on the basis of cogent materials. In case a lenient view is taken, the benefits shall be restricted to the period the applicant had in fact served i.e. up to 17.03.1983.

14. The OA is accordingly disposed of with no order as to costs.” **Underline Supplied**

4. In the light of the order dated 18.07.2012, respondents have proceeded to pass order on 16.01.2013 while imposing penalty of compulsory retirement with effect from 17.03.1983 in the light of paragraph 13 of the order dated 18.07.2012 cited *supra*.

5. Feeling aggrieved by the order dated 16.01.2013, petitioner presented O.A. No. 77 of 2013 and it was rejected on



25.07.2016. Thus, the present petition in questioning the order of the Tribunal dated 25.07.2016.

6. Learned counsel for the petitioner submitted that order dated 16.01.2013 cannot be given retrospectively for the reasons that earlier orders dated 07.09.1987, 09.02.1986 and 29.09.1988 were quashed by the Tribunal and it was accepted by Department. In other words, the order dated 18.07.2012 passed in O.A. No. 10 of 2006 is binding on the *inter se* parties.

7. Learned counsel for the petitioner submitted that in the light of the Tribunal's order dated 18.07.2012 the intervening from the initial order of dismissal i.e. 17.03.1983 to 16.01.2013 required to be regularized for the purpose of extending service benefits including monetary benefits.

8. *Per contra*, learned counsel for the respondent resisted the aforesaid contention and submitted that there is no infirmity in the order of department dated 16.01.2013 and 25.07.2016 of the Tribunal in the light of paragraph 13 of the order dated 18.07.2012 passed in O.A. No. 10 of 2006. The Tribunal has given a direction to the extent that in case lenient view is taken, the benefit shall be restricted to the petitioner to the period had in fact served i.e. up to 17.03.1983. The petitioner has infact served authorities up to 17.03.1983, therefore, order dated 16.01.2013 has been given



retrospectively while imposing penalty of compulsory retirement on the petitioner.

9. Heard learned counsel for the respective parties.

10. Crux of the matter in the present petition is whether the respondent could pass punishment order retrospectively or not or punishment of compulsory retirement could be given retrospectively from 17.01.1983 or prospective from 16.01.2013 or not?

11. Undisputed facts are that the petitioner remained unauthorized absent from 17.03.1983 and he was subjected to disciplinary proceedings and it was concluded in imposition of penalty of removal from service, thereafter, order of removal was the subject matter of litigation before the appellate authority and revisional authority and further it was a subject matter of O.A. No. 10 of 2006. On 18.07.2012 O.A. No. 10 of 2006 was disposed off. It is necessary to reiterate relevant extract of paragraph 13 of the order which reads as under:

“In case a lenient view is taken, the benefits shall be restricted to the period the applicant had in fact served i.e. up to 17.03.1983.”

Underline Supplied

12. Order dated 18.07.2012 is relevant for the purpose of imposition of penalty of compulsory retirement retrospectively, since Tribunal restricted benefit, if any, up to 17.03.1983.



13. In the light of the aforesaid order the respondent have rightly imposed the penalty of compulsory retirement with effect from 17.03.1983 and the petitioner is not entitled to any service benefits including monetary benefits from 17.03.1983. In fact it is to be noticed that the petitioner should have questioned the validity of the last portion of the paragraph 13 of the order dated 18.07.2012 whereby the Tribunal has restricted the benefits to the petitioner upto 17.03.1983 only. In the absence of challenge to the aforesaid portion of the order dated 18.07.2012 passed in O.A. No. 10 of 2006, the petitioner has not made out a case so as to interfere with the order dated 16.01.2013 of the respondents read with order of the Tribunal dated 25.07.2016 passed in O.A. No. 77 of 2013 by Central Administrative Tribunal, Patna Bench, Patna.

14. Accordingly, petition stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2022
Transmission Date	

