

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6928 of 2018

1. The Union Of India and Ors
2. The General Manager Personnel, East Central Railway, Hajipur, District-
Vaishali Bihar.
3. The Divisional Railway Manager, East Central Railway, P.O.- Khagaul,
District- Patna Bihar.
4. The Additional Divisional Railway Manager, East Central Railway, P.O.-
Khagaul, District- Patna Bih
5. The Senior Divisional Personnel Officer, East Central Railway, P.O.-
Khagaul, District- Patna Bihar
6. The Senior Divisional Engineer Co-ordination, East Central Railway, P.O.-
Khagaul, District- Patna
7. The Senior Divisional Financial Manager, East Central Railway, P.O.-
Khagaul, District- Patna Bihar

... .. Petitioner/s

Versus

S. K. Roy son of Late M.D. Roy, Senior Section Engineer P.Way, East Central
Railway, Danapur, District Patna Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Pandey, SCGC Mr. Ravinder Kumar Sharma, CGC
For the Respondent/s	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. S.K. Chaubey, 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 : 18-07-2022

Heard learned counsels for the parties.

2. The respondent was subjected to disciplinary proceedings
in respect of alleged allegations relating to shortage of 3584
metres, 52 Kg scrap rail material. Instead of holding departmental



enquiry authorities directly order for recovery of a sum of Rs. 31,83,846/-.

3. Feeling aggrieved by the order of the Disciplinary Authority respondent preferred an appeal before the appellate authority and it was decided against the respondent while modifying instead of recovery in lump sum as sum of Rs. 31,83,846/- appellate authority relaxed it to the extent of recovery shall be made as a sum of Rs. 20,000/- per month from the month of December, 2021. Feeling aggrieved and dissatisfied with the order of the disciplinary and appellate authority, respondent preferred O.A. 179 of 2013 which was disposed of directing the 4th respondent to decide appeal afresh and further order of recovery was stayed till disposal of appeal. Thereafter, on 29.04.2013 appellate authority affirmed the order of the disciplinary authority. Insofar as the recovery is concerned the respondent once again approached the Central Administrative Tribunal in questioning the appellate authority's order in O.A. No. 306 of 2013 wherein the following order was passed:-

“9. In the instant case, since there is a shortage of huge sum of money amounting to Rs. 3183846/-, a minor penalty proceeding issued under SF-11 avoiding a major penalty charge-sheet, being found mala fide and oblique is quashed. Further the order passed by Disciplinary Authority so also of the Appellate Authority passed



without any basic document of entrustment and shortage are quashed. The respondents are at liberty to initiate afresh enquiry against the applicant for the shortage after making necessary preliminary enquiry. if he is found, prima facie, guilty of misappropriation and shortage, a major penalty charge memo be served for initiating departmental proceeding. It is further made clear that if no departmental enquiry is initiated within one year, amount already recovered from the applicant in view of order passed earlier by the Disciplinary Authority, may be refunded to him forthwith.”

4. Feeling aggrieved and dissatisfied with the aforesaid order of the tribunal the petitioners have presented this petition.

5. We find no *prima facie* case is made out by the petitioners in respect of the interference with the order of the tribunal dated 23.05.2017 passed in O.A. No. 306 of 2013 for the reasons that recovery order was in the absence of holding a departmental enquiry. Therefore, rightly liberty was given to the concerned authority to initiate a fresh enquiry against the respondent for the alleged shortage of material after holding of a necessary preliminary enquiry. If the petitioners found that *prima facie* there was a case against the respondent in that event major penalty charge memo be served while initiating departmental proceedings. Such liberty has been given to complete the proceedings within one year.



6. Undisputedly even to this day there is a non-compliance to the aforesaid liberty given to the petitioners so also recovered amount is yet to be returned to the respondent. If the petitioners have not refunded the recovered amount from the respondent, in that event necessary calculation shall be made by the petitioner to what extent recovery has been made from the respondent and the same shall be refunded to the respondent along with the interest at the rate of 6 per cent per anum.

7. With the above observation petition stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Shashank
GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	22.07.2022
Transmission Date	

