

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14749 of 2017

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Afsar Ahmed, son of Late Ashfaq Ullah, The then Reservation Supervisor/II, East Central Railway, Rajendra Nagar, Patna Bihar presently posted at Hazaribagh Road Railway Station under East Central Railway, Dhanbad Division.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam, Advocate.
For the Respondent/s : Mr. Radhika Raman, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

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

Date : 06-12-2022

In the instant writ petition, the petitioner has assailed the order of the Central Administrative Tribunal (for short ‘Tribunal’) dated 02.08.2017 passed in O.A. No. 552 of 2016.

2. The petitioner was subjected to disciplinary proceeding on 29.08.2011 in framing four charges. Before



termination of the disciplinary proceeding at the hand of the inquiring officer, the disciplinary authority proceeded to invoke Rule 9(a)(iv) of Rules called Railway Servant (Discipline and Appeal) Rules, 1968 (for short ' Rules 1968') read with Circular dated 01.12.1993. After three years, fresh inquiry has been initiated in framing four Articles of charges on 16.12.2014.

3. Perusal of the Article of charges issued on 29.08.2011 and 16.12.2014 are identical. Thus, petitioner feeling aggrieved by initiation of second inquiry proceeding invoke Section 19 of the Administrative Tribunal Act, 1985 in filing Original Application before the Tribunal. The Tribunal rejected the Original Application No. 552 of 2016 filed by the petitioner, hence the present writ petition.

4. Learned counsel for the petitioner submitted that Tribunal has committed error in not appreciating that there is no provision of law to withdraw a disciplinary proceeding once it is lodged against an employee. It is submitted that logical end would be either in exoneration or imposition of penalty. The Disciplinary Authority for no reason withdrew the initiation of inquiry dated 29.08.2011 on 05.11.2014 and proceeded to initiate a fresh inquiry (second inquiry) on 16.12.2014. The impugned action is not in accordance with Rules 1968. It is also



submitted that Circular dated 01.12.1993 would not prevail over the Rules 1968. These issues have not been apprised by the Tribunal while rejecting the application filed by the petitioner.

5. Per contra, learned counsel for the respondent resisted the aforesaid contention and supported the order of the Disciplinary Authority in initiation of second inquiry on 16.12.2014 and order of the Tribunal dated 02.08.2017 passed in O.A. No. 552 of 2016. It is submitted that Disciplinary Authority has rightly taken a decision to withdraw the initiation of inquiry dated 29.08.2011 on 05.11.2014 with reference to Rule 9(a)(iv) of Rules, 1968 read with Circular dated 01.12.1993. Therefore, the petitioner has not made out a *prima facie* case so as to interfere with the initiation of second inquiry dated 16.12.2014 and order of the Tribunal.

6. Heard the learned counsels for the respective parties.

7. The petitioner was subjected to disciplinary proceeding on 29.08.2011 in framing four Article of charges. During pendency of the disciplinary proceeding, Disciplinary Authority proceeded to withdraw the initiation of inquiry on 05.11.2014 in the absence of any statutory provision of law. On the other hand, Disciplinary Authority is trying to take shelter



under Rule 9(a)(iv) of Rules, 1968 read with Circular dated 01.12.1993. Rule 9(a)(iv) of Rules, 1968 reads as under:

“(9)(a)(iv) If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of the sub-rule (2) of Rule 11. Where the disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties not attracting the provisions of sub-rule (2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed.”

8. Perusal of the aforesaid provision, having regard to the facts of the present case, Rule 9(a)(iv) of Rules, 1968 is not attracted. It is totally under a different circumstance. Circular will not prevail over the Rules, 1968. In other words, there is no provision of law once initiation of inquiry is initiated against an employee under Rules, 1968 other than conclusion of the inquiry either imposition of penalty or exoneration or abatement of proceedings. Further, fresh inquiry could have been ordered if there is any judicial pronouncement. Other than these circumstances, Disciplinary Authority has not been empowered to initiate second inquiry while withdrawing the first inquiry. The Tribunal has only taken note of that no prejudice would cause to the petitioner in initiation of the



second inquiry. Such a finding cannot be appreciated in the light of the fact that Disciplinary Authority has no power to initiate second inquiry while withdrawing the first inquiry in the absence of statutory powers vested in him / her under Rules, 1968.

9. In view of these facts and circumstances, the petitioner has made out a prima facie case so as to interfere with the initiation of second inquiry dated 16.12.2014 and order of the Tribunal dated 02.08.2017 passed in O.A. No. 552 of 2016. Accordingly, they are set aside. Writ petition stands allowed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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