

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23444 of 2019

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Dilip Kumar Singh Son of Sri Ramesh Chandra Singh, Resident of Village-
Paghari Chack, P.O. and p.S. Sonapur, District- Saran, Chapra at Present
Residing at Balraj House, Road No. 15E, Rajeev Nagar, Patna-

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The General Manager(P), East Central Railway, Hajipur.
3. The General Manager(C), East Central Railway, Hajipur.
4. The Divisional Railway Manager, East Central Railway, Danapur.
5. The Divisional Railway Manager(P), East Central Railway, Danapur.
6. The Divisional Railway Manager(C), also Known as Senior Divisional Commercial Manager, East Central Railway, Dhanbad.
7. The Divisional Commercial Manager, East Central Railway, Dhanbad.
8. The Assistant Commercial Manager, East Central Railway, Danapur.
9. The Senior Divisional Personnel Officer, East Central Railway, Danapur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kunal Tiwary, Advocate
For the Respondent/s : Mr. Kumar Sachin, CGC

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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 : 24-08-2022

In the instant petition, petitioner has assailed the order dated 30.08.2019 passed in O.A. No. 050/00361/16 on the file of the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”).

2. The petitioner was subjected to disciplinary proceedings in framing four charges namely -



“(i) He alleged to have demanded and accepted Rs. 10 /- excess on each of the two tickets ex. PNBE to Udhana from the decoy passenger.

(ii) One ticket no. S 58833384 ex. PNBE to KIR was found at the counter without making N.I.

(iii) Rs. 51/- was found short in his Govt. cash at thime of vigilance check.

(iv) The alleged excess realization of Rs. 10/- was made in the name of super fast though 9050 UP train for which the ticket was purchased by the decoy passenger”

3. In this regard charge memo was issued on 17.02.2006. The petitioner is stated to have denied the charges on 28.02.2006. The disciplinary authority was not satisfied with the petitioner’s explanation to the charge memo and proceeded to hold an inquiry while appointing an inquiry officer. The inquiring officer has given his report while holding the charge Nos. 2 and 3 were proved and charge Nos. 1 and 4 were not proved. On receipt of inquiring officer’s report, disciplinary authority issued second show cause notice on 05.03.2007 for which petitioner is stated to have submitted explanation on 20.03.2007. Thereafter, the disciplinary authority proceeded to impose penalty of reduction of his pay to the initial stage of next lower grade for three years with cumulative effect. In other words, he was drawing pay at a sum of Rs. 11650 in the pay band of Rs. 9300-34800 and G.P. Rs. 4200 to



Rs. 5200 in pay band of Rs. 5200-20200 (initial stage) and G.P. Rs. 2800.

4. Feeling aggrieved and dissatisfied with the order of the disciplinary authority, petitioner preferred appeal before the appellate authority on 06.01.2010 and it was rejected on 11.10.2010. Thereafter, petitioner filed an O.A. before the Tribunal under Section 19 of the Administrative Tribunal Act 1985. The O.A. No. 560 of 2010 was disposed of on 13.04.2015 while remanding the matter to the appellate authority. The appellate authority proceeded to pass a fresh order on the petitioner's appeal. The appellate authority passed a fresh order on 17.06.2015 while confirming the order of the disciplinary authority dated 27.10.2009. Thereafter, once again the petitioner invoke remedy before the Tribunal in filing O.A. No. 050/00361/16. The Tribunal disposed of petitioner's second O.A. No. 050/00361/16 on 30.08.2019 while dismissing the aforesaid application. Hence the present writ petition.

5. Learned counsel for the petitioner submitted that disciplinary authority has not considered the reply to the second show cause notice and it is further submitted that the same has not been appreciated by the appellate authority. It is also submitted that appellate authority has not examined each of the contentions



raised by him in the memorandum of appeal. It is further submitted that appellate authority has passed order beyond the material information and he has invoked his personal knowledge. It is also pointed out that Rule 22 (2) of Railway Servant [D & A] Rules, 1968 has not been taken note of and appreciated that the disciplinary authority has failed to pass a speaking order in terms of Rule 10 of the Rules 1968 that is on receipt of inquiring officer's report the disciplinary authority has not taken note of Rule 10 read with the issuance of second show cause notice and explanation of the petitioner which would fall under Rule 22 (2) (a) of Rules 1968.

6. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that there is no infirmity in the disciplinary authority's order dated 27.10.2009, appellate authority's order dated 17.06.2015 and the order of the Tribunal dated 30.08.2019. It is also submitted that disciplinary authority need not assign reason while imposing the penalty if he has perused the records of the disciplinary proceedings that is sufficient. Further, there is no infirmity in the order of the appellate authority dated 17.06.2015.

7. Heard learned counsel for the respective parties.



8. The petitioner was subjected to disciplinary proceedings in framing article of charges on 17.02.2006 and it was concluded in imposition of penalty on 27.10.2009. The petitioner suffered an order before the appellate authority on 11.10.2010. Penalty order and the appellate authority's order were subject matter on O.A. No. 560 of 2010 and it was disposed of on 13.04.2015 while remanding the matter to the appellate authority. The appellate authority passed a fresh order on 17.06.2015 and it was subject matter of O.A. No. 050/00361/16 and it was decided on 30.08.2019 against petitioner.

9. Learned counsel for the petitioner submitted that disciplinary authority has not considered the explanation to the second show cause notice dated 20.03.2007. Order of the disciplinary authority is an appealable order. In such circumstances disciplinary authority order must be reasoned order after due consideration of explanation of the petitioner to the second show cause notice. Further, it is submitted that appellate authority has not complied the procedure laid down under Rule 22 (2) of Rules, 1968.

10. Perusal of the records, it is evident that disciplinary authority has not even referred to the petitioner's explanation dated 20.03.2007 pursuant to the second show cause notice dated



05.03.2007. In other words, issuance of second show cause notice and receiving explanation from the petitioner is only an empty formality. Apex Court in the case *Secretary And Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others* reported in (2010) 3 SCC 732 read with *ORYX Fisheries Private Limited vs. Union of India and Others* reported in (2010)

13 Supreme Court Cases 427 held as under:

40. In *Kranti Associates* [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below : (SCC pp. 510-12)

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is



virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of *Strasbourg Jurisprudence*. See *Ruiz Torija v. Spain* [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and *Anyia v. University of Oxford* [2001 EWCA Civ 405 : 2001 ICR 847 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."



11. The disciplinary authority is exercising quasi-judicial function while imposing penalty on the petitioner in terms of Rules 1968 and disciplinary authority's order is appealable order. In other words, it can be subject matter of judicial review. In such circumstances it was bounden duty of the concerned authority to pass a speaking order while considering explanation of the concerned person, the same is not forthcoming. Moreover, the disciplinary authority has not taken note of Rule 10 of Rules, 1968. Similarly the appellate authority has not adhered to the Rule 22 (2) (a) of Rules, 1968. The aforesaid provision reads as under:

“22(2)(a) whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice”.

12. The appellate authority has not taken note of the order of the disciplinary authority *in toto* for the reasons that there is a non-compliance in not considering petitioner's explanation to the second show cause notice whereby the principle of natural justice is violated. That apart the very object of providing second show cause notice along with inquiring officer's report and seeking explanation is defeated. Therefore, these issues have not been apprised by the appellate authority and so also by the Tribunal



while dismissing the petitioner's O.A./050/00361/16 on 30.08.2019.

13. Ordinarily Courts and Tribunals would not interfere in respect of disciplinary proceedings. In the present case both the disciplinary and appellate authority have not adhered to Rule 10 and Rule 22 (2) (a) of Rules, 1968 respectively. The aforesaid legal issues have not been apprised by the Tribunal in its order dated 30.08.2019. In the light of these facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with the penalty order dated 27.10.2009, appellate authority's order dated 17.06.2015 and order of the Tribunal dated 30.08.2019 passed in O.A. No. 050/00361/16. They are set aside, writ petition stands allowed. In the result concerned authority is hereby directed to settle monetary benefits of the petitioner within six months from today.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	30.08.2022
Transmission Date	

