

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.790 of 2020**

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The Union of India through the General Manager, Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700001

... .. Petitioner/s

Versus

1. Kaushal Kumar Son of late Keshav Paswan, Resident of Quarter No. 87/B, Loco Colony, Khagaul, District- Patna, Bihar.
2. The General Manager (Personnel), , Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700001
3. The Sub Urban Railway Manager, Eastern Railway, Howrah.
4. The Senior Divisional Signal and Telecom Engineer, Eastern Railway , Howrah.
5. The Senior Divisional Personnel Officer, Eastern Railway, Howrah.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-------------------------------------------|
| For the Petitioner/s | : | Mr. Naresh Dixit, Advocate                |
|                      |   | Mr. Sumit Shekhar Pandey, Advocate        |
| For the Respondent/s | : | Mr. Munna Pd Dixit (M.P. Dixit), Advocate |
|                      |   | Mr. S. K. Dixit, Advocate                 |
|                      |   | Mr. Sanjay Kumar Chaubey, Advocate        |
|                      |   | Mrs. Swastika, Advocate                   |

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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 : 13-12-2022**

The present writ petition is filed on behalf of the Union of India-Railway Department. Respondent-Kaushal Kumar who was appointed as TCM Grade-III in pay band of Rs. 5200-20200 in Grade Pay of Rs. 1900. His services were confirmed on 18.08.2009, thereafter, he was earned promotion to the post of TCM Grade-II. He was subjected to disciplinary proceedings and charge-sheet was filed on 20.05.2014 under Rule 9 of Railway



Servants (D & A) Rules, 1968 (for short "Rules 1968"). Such initiation of inquiry is by Senior Division Signal and Telecom Engineer, Eastern Railway, Howrah. The alleged allegation is that the respondent-Kaushal Kumar is stated to have given a false declaration in attestation form regarding intermediate qualification. He had submitted his explanation denying the alleged charge. The disciplinary authority who has initiated inquiry was not satisfied with the respondent's explanation hence he proceeded to conduct an inquiry. The inquiring officer held that that the charges levelled against the respondent was proved. To that effect inquiry officer has submitted his report on 25.07.2014. Pursuant to the inquiring officer's report Senior Division Signal & Telecom Engineer, Eastern Railway, Howrah proceeded to impose the penalty of removal from service on 12.09.2014.

Feeling aggrieved and dissatisfied with the order of the removal respondent preferred appeal before the appellate authority and appeal was rejected by Senior Divisional Signal & Telecom Engineer, Eastern Railway, Howrah. Feeling aggrieved by the order of removal and appellate authority's order respondent invoke remedy under section 19 of the Administrative Tribunal Act, 1985 in filing OA No. 050/00466/15 before the Central Administrative Tribunal, Patna Bench, Patna (for short "the



CAT"). CAT, Patna Bench, Patna allowed the OA No. 050/00466/15 on 07.03.2019, hence, the present petition on behalf of the Railway Department.

Learned counsel for the Railway Department vehemently contended that Tribunal has committed error in not appreciating that head of the department has imposed the penalty of removal from service who is competent to impose the penalty. The same has not been appreciated by the Tribunal. In this regard, he has pointed out Rule 2(1)(d) of Rules, 1968 read with clause 21 of Rule 103 Volume 1 of Indian Railway Establishment Code. Further, it is submitted that no orders have been passed on merit by the CAT, Patna Bench, Patna. Hence, order of the CAT, Patna Bench, Patna dated 07.03.19 is liable to be set aside.

*Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that the Tribunal has dealt with the matter in para 4 and it has come to the conclusion that author of removal order is not the competent authority to impose the penalty of removal from service. It is further submitted that the petitioner's contention with reference to Rule 2(1)(d) read with Manual Indian Railway Code is not appreciable for the reasons that in the Schedule-II Item no. 4 is relating to JAG and SS (IC) or In-charge of the department in Division is empowered to impose



any of the penalty clauses (i) to (vi) and suspension. Removal penalty would not fall under the aforesaid clauses. Therefore, author of the removal order is not empowered to impose the penalty of removal from service even though he is declared as head of the department. Hence, no interference is called for.

Heard learned counsels for the respective parties.

Respondent was subjected to disciplinary proceedings and it was concluded in imposition of penalty of removal from service under Rules, 1968. Respondent has exhausted the remedy of appeal, thereafter, invoke remedy before the CAT. CAT allowed the respondent's original application purely on legal issue namely that the author of the removal order is not the competent authority to impose punishment of removal from service on the respondent. In para 4 it is held as under:-

*"4. We have gone through the pleadings and heard the learned counsels of both the parties. The main issue is whether the applicant has been removed by an authority lower than the authority which appointed him. Both the parties have not produced before us a clear appointment order. However, the applicant has produced a letter from Assistant Secretary, Railway Recruitment Board, Kolkata dated 30.09.2005 which mentions that "The offer of appointment will be sent to you by the General Manager (P), Eastern Railway." The applicant also brought to our notice the following position as*



*mentioned in Bahri's Railway Servants (D&A) Rules. 1968:-*

*"G.M. as appointing authority-General Manager shall be considered to be the appointing authority for staff in class III and Iv categories as also semi-skilled, skilled and artisan staff were records or appointment letters to show the actual appointing authority of such staff are not available. Accordingly, the punishment of dismissal/removal/compulsory retirement from service cannot be inflicted on such staff by an authority lower than the General Manager, [N.Rly Letter No. 52-E)/31E (D&A) dt. 21.08.1964]."*

*They have also drawn our attention to the clarification issued by Board's letter No. (D&A) 6f3 RG6-23 dated 21.02.1964 wherein the Board had decided that in cases where records or appointment letters to show the actual appointing authority are not available, the General Manager should be treated as the 'appointing authority' and it would not be safe to follow any other course. In this case the RRB letter indicated that the letter of appointment will be issued by the G.M. Hence, it is safe to assume that the General Manager is an appointing authority for the applicant. The respondents have produced Schedule-II (Schedule of Discipline powers in relation to Railway officers) where different levels of authorities are specified for different levels of staff. This rule also clearly mentions that appointing authority or an authority of equivalent rank or any higher authority is the authority competent to impose punishment of removal from service. Since in this case,*



*admittedly, the punishment has been imposed by an authority lower than the General Manager, it is prima facie hit by the Constitutional provisions under Article 311 (1) of the Constitution. That being so, we have no option but to quash the orders of the Disciplinary as well as the Appellate Authority which are passed by an officer of a rank lower than that of the General Manager (P). We are not expressing anything here about merits of other claims made by the applicant in this OA. The railway authorities will be free to initiate action against the applicant at an appropriate level if they still feel there are sufficient reasons to do so. The OA is disposed of accordingly. No order as to costs."*

In the light of the finding given by the Tribunal and so also that author of the removal authority is not empowered to impose penalty of removal from service even though he is head of the department. He is empowered to impose minor penalties and empower to suspend an employee like respondent. That apart, perusal of Annexure-R2 it is noticed that provisional appointment was issued on 16.04.2007 by the Chief Personnel Officer (issued on his behalf) by the Assistant Personnel Officer. This document reveals that appointing authority insofar as respondent is concerned Chief Personnel Officer. Further, it is to be noted that as on the date of removal from service appointing authority is required to be examine with reference to the promotion order of the respondent to the post of TCM Grade-II. This has not been



appreciated by either of the counsel to the extent that who has promoted to the respondent. Be that as it may removal authority in the present case is not empower to impose the penalty of removal from service on the respondent. Moreover it is settled position that the removal and dismissal of a delinquent on misconduct must be by authority not below the Appointing authority as held in the case of **Secretary, Ministry of Defence vs. Prabhash Chandra Mirdha** reported in **(2012) 11 SCC 565**. In view of these facts and circumstances, the petitioner has not made out a case so as to interfere with the order of the CAT, Patna Bench, Patna dated 07.03.2019 passed in OA No. 050/00466/15.

Accordingly, the present writ petition stands dismissed.

**(P. B. Bajanthri, J)**

**(Purnendu Singh, J)**

Vikash/-

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