IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2284 of 2020

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1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar), Pin- 844101.
2. The Chief Administrative Officer/Con./Mahendrughat, District- Patna (Bihar), Pin- 800004.
3. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hajipur, District- Vaishali (Bihar), Pin- 844101.
4. The Divisional Railway Manager, East Central Railway, Sonepur- 841101.
5. The Senior Divisional Manager, East Central Railway, Sonepur- 841101.
6. The Senior Divisional Manager (Co-ordination), East Central Railway, Sonepur- 841101.

... ... Petitioner/s

Versus

Sheojee Prasad, Son of Late Amawash Prasad, Ex Executive Engineer/ Con/ Khagaria under Chief Engineer/Con., East Central Railway, presently residing at Bankmen Colony, Hajipur- 844101.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Kanak Verma, CGC
For the Respondent/s	:	Mr.Munna Pd Dixit (M.P. Dixit), Advocate
		Mr. S.K. Dixit, Advocate
		Mr. S.K. Chaubey, Advocate
		Mrs. Swastika, Advocate

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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 : 17-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners-department have questioned the validity of the order dated 26.04.2019 passed in O.A. No. 050/00175 of 2018, by the Central Administrative Tribunal, Patna Bench, Patna.

3. Respondent- Sheojee Prasad was posted as Store

Incharge of Works/ Senior Section Engineer, Muzaffarpur on 11.05.1999. The department found certain shortage of material in the stores. To that effect, it was noted down three dates on 23.11.2000, 08.08.2003 and 27.07.2005 which are relating to shortage of store materials. The shortage of store materials and the amount that has caused loss to the department-petitioners was informed to the respondent on 25.01.2017 and so also order for recovery of Rs. 1,26,772/-. The respondent attained age of superannuation and retired from service on 31.01.2018. Feeling aggrieved and dissatisfied with the order of recovery dated 14.11.2017, respondent invoked remedy under Section 19 of the Administrative Tribunal Act, 1985 and filed O.A. No. 050/00175 of 2018 before the Central Administrative Tribunal, Patna Bench, Patna. The Central Administrative Tribunal allowed the application while quashing the order of recovery dated 14.11.2017 on 26.04.2019.

4. Feeling aggrieved by the order of the Central Administrative Tribunal dated 26.04.2019, present petition is presented by the petitioners-department.

5. Learned counsel for petitioners-department submitted that it is not disputed shortage of material and calculation and determined loss caused to the department for

which domestic enquiry is not warranted. Therefore, the order of the Tribunal dated 26.04.2019 is liable to be set aside while affirming the order dated 14.11.2017.

Para 3 of the Tribunal order is reproduced hereunder:-

> “3. I have gone through the pleadings and heard the arguments by learned counsels of both the sides. The main issue in this case is whether the loss caused to the department because of shortage in the stocks discovered at the time of verification can be recovered from the person In-charge of those stocks without taking any further action under the RS(DA) Rules, 1968. The applicant has cited the decision of Mumbai Bench of this Tribunal in the case of Dilip Baburao Pawar Vs. DRM & Ors. (OA 917 of 1997) where it was decided that recovery cannot be made without following the RS(DA) Rules, 1968 in case the concerned employee has not admitted the debits raised by the Department. This case was decided on the basis of the para-2732 of Chapter XXVII of Indian Railway Commercial Manual. This rule provides for action in accordance with the procedure laid in the Establishment Code for imposing a penalty of recovery. The decision also quotes another decision of the same Bench in R.G. Gupta Vs. UOI (OA 365/1997 decided by the same Bench of the Tribunal) where it was held that no recovery of loss can be made without completion of the disciplinary proceedings. I find that in this case no action is even initiated for taking departmental action against the applicant

for recovery of this alleged loss. It is also clear from the record that the information given to the applicant through letter dated 25.01.2017 was only with respect to the third item in the impugned order where the alleged shortage was mentioned as Rs. 1,02,075/- in the earlier letter. This amount was later reduced to Rs. 1400/- in the impugned order which, the applicant alleges, has happened because of the opportunity given to him to explain the discrepancy. It is also clear from the records that no such prior information was given to the applicant with respect to the first two items regarding which the deduction was informed only by letter dated 18.05.2017. There is no record produced before the Tribunal to show that the applicant had admitted his responsibility for his shortage. On the other hand, he has been objecting to these deductions and his reply has not been found satisfactory by the Department. In such a case, the only course open to the Department was to take action against the concerned disciplinary rules to fix his responsibility for the loss and recover it from him by way of punishment, if, after the conduct of such enquiry, there was sufficient proof of his delinquency in this matter. In the absence of any such action the recovery made by the respondents from the salary of the applicant by the impugned order is not correct. The impugned order dated 14.11.2017 is hereby quashed and the respondents are directed to refund the recovery made within two months of receipt of this order. The OA is disposed of accordingly. No order as to costs."

6. The petitioners-department have not determined

the alleged loss caused to the department due to alleged shortage of store materials when the respondent was working as store Incharge of Works/Senior Section Engineer, Muzaffarpur. When there is disputed fact relating to shortage of store material and assessment of amount with reference to shortage of materials, the department was required to determine by passing a speaking order and thereafter a notice is required to be issued to the concerned respondent. If the department were not satisfied or disputed fact is required to be determine, in that event departmental enquiry is warranted.

7. In the light of these facts and circumstances, petitioners-department have not made out a case.

8. Accordingly, the present petition stands dismissed while affirming the Tribunal order dated 26.04.2019 passed in O.A. No. 050/00175/2018.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
Uploading Date	24.08.2022
Transmission Date	