

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2656 of 2016

=====

R. K. Roy S/o Late Prabhu Roy, resident of Allipur Hata, P.O./P.S. Mahanar,
Dist- Vaishali Bihar last employed as Safety Counsellor/P.Way, East Central
Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.

... .. Petitioner/s

Versus

1. The Union Of India
2. General Manager, E.C. Railway, Hajipur, Distt- Vaishali- 844101.
3. Principal Chief Engineer, E.C. Railway, Hajipur, Vaishali- 844101
4. Chief Medical Director, E.C. Railway, Hajipur, Vaishali- 844101
5. Chief Personnel Officer, E.C. Railway, Hajipur, Vaishali- 844101
6. Divisional Railway Manager, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.
7. Additional Divisional Railway Manager, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.
8. Chief Medical Superintendent, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.
9. Senior Divisional Engineer Co-ordination, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 8011
10. Senior Divisional Personnel Officer, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.
11. Senior Divisional Safety Officer, E.C. Railway, Danapur, P.O.- Khagaul, Distt- Patna- 801105.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. M. P. Dixit, Advocate Mr. S. K. Dixit, Advocate Mr. S. K. Chaubey, Advocate Ms. Swastika, Advocate
For the Respondent/s	:	Mr. Abhay Shankar Jha, CGC Mr. Hrisikesh, Advocate



=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-07-2023

1. In the instant petition, the petitioner has assailed the order of the CAT dated 10.04.2015, passed in O.A. No. 51 of 2010.

2. The petitioner was subjected to disciplinary proceedings while holding the post of Permanent Way Inspector (Junior Engineer Permanent Way). He has been removed from service and it was subject matter of OA No. 51 of 2010.

3. The petitioner raised an issue that the competent authority / Appointing Authority / Disciplinary Authority has not passed the order of removal from service in the light of the fact that the petitioner was appointed by higher authority than the Senior Personal Officer.

4. On this short ground, the order of imposing penalty of removal from service and order of CAT are liable to be set aside.

5. On this issue, time and again the respondents were granted time to apprise this Court with reference to order of appointment issued to the petitioner dated 21st of September, 1992



(Annexure-B series). In the bottom of the order, it is mentioned that “this has the approval of the competent authority” and order has been passed by Senior Personal Officer (Construction), Calcutta, dated 21st of September, 1992. This appointment order has been signed on behalf of “for Chief Engineer (S & C)”.

6. Despite giving number of adjournments, the respondents could not apprise this Court as to who is the Appointing Authority in so far as Permanent Way Inspector. In other words, the word used “this has the approval of the competent authority” in the order of appointment dated 21st of September, 1992, has not been apprised by the respondents.

7. On the other hand, they have taken us to the Schedule-II [See rule 4 and sub-rule (2) of rule 7]. The extract of Scheduled-II reads as under:

“Schedule of Disciplinary powers and powers of suspension of different grades of Railway Officers and Senior supervisors in respect of non-gazetted staff of Zonal Railways, Chittaranjan Locomotive Works, Diesel Locomotive works, Integral Coach Factory, Rail Wheel Factory, Metro Railway (Kolkata), Diesel Loco Modernization Works (Patiala), Rail Coach Factory (Kapurthala), Railway Electrification Projects and Metropolitan Transport Projects (Railways).

Sl. No.	Authority empowered to place a Railway servant under suspension	Class of Railway servants over whom disciplinary powers can be	Nature of penalties mentioned in rule 6 which the authority in column 2 is empowered to impose on Railway Servants mentioned	Appellate Authority
---------	---	--	--	---------------------



	or to impose penalties under rule 6	exercised	in corresponding entries in column 3 and powers of that authority to place them under suspension	
4.	Junior Administrative Grade Officers and Senior Scale Officers holding independent Charge or In-charge of a Department in the Division	All Classes of non-gazetted staff	Penalties specified in clauses (I) to (vi) and suspension	Additional Divisional Railway Managers in relation to the Departments attached to them or Divisional Railway Managers

Note:
(1) An Appointing authority or an authority of equivalent rank or any higher authority shall be competent to impose penalties specified in clauses (vii), (viii) and (ix) of rule 6.”

8. The Schedule-II is not in respect of Permanent Way Inspector post, so as as to apprise Item No. 4 cited on behalf of the respondents to contend that competent authority has imposed the penalty of removal from service on the petitioner. On this score, the impugned penalty order of removal and order of CAT, dated 10.04.2015 are set aside. The writ petition stands allowed, reserving liberty to the competent authority to proceed further in the enquiry matter from the defective stage and complete the



proceedings within a period of six months from the date of receipt of a copy of this order.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2023
Transmission Date	NA

