

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18014 of 2022

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Anita Kumari @ Anita Kisku W/o Late John Kisku, Traffic Porter Under Senior Divisional Operating Managher, Samaastipur Division of E.C. Rly.Hajipur, Resident of Village-Barmani, PO.-Barmasiya, P.S.- Dharhara, District-Munger (Bihar), Pin-811212.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar) Pin-844101.
2. The General Manager, (Personnel), East Central Railway, Hajipur, District-Vaishali (Bihar) Pin-844101.
3. The Principal Chief Operating Manager, East Central Railway, Hajipur, District-Vaishali (Bihar) Pin-844101.
4. The Divisional Railway Manager, East Central Railway, Samastipur, (Bihar) Pin-848101.
5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, (Bihar) Pin-848101.
6. The Senior Divisional Operating Manager, East Central Railway, Samastipur, (Bihar) Pin-848101.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza, Advocate
For the UOI : Mr. Raj Kamal, Advocate

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

Date : 24-01-2023

In the instant writ petition, petitioner has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short "CAT") dated 05.04.2022 in O.A. No. 050/00234/2022.



02. Petitioner's husband was working as Khalasi in Mechanical Department of Samastipur Division of East Central Railway. The husband of the petitioner died on 09.11.2001. Petitioner filed the application for compassionate appointment and she was appointed on compassionate ground in the year 2017. Respondents were stated to have received complaint against the petitioner that after death of her husband she was remarried in the year 2004 and it was not disclosed in the compassionate appointment application. She has also not disclosed certain material information for the purpose of claiming compassionate appointment. Taking note of such complaint respondents proceeded to issue a show cause notice and on receipt of reply proceeded to terminate her services.

03. Feeling aggrieved and dissatisfied with the order of termination she has invoked remedy under Section 19 of the Administrative Tribunal Act, 1985 in filing OA No. 050/00234/2022. CAT rejected the petitioner's application while taking note of dates and events. Even CAT has taken note of the alleged furnishing false information at the time of obtaining compassionate appointment.

04. Learned counsel for the appellant vehemently contended that petitioner was appointed in the year 2017 and she



was on probation. After probation period was over she was regular holder of the post in the Railway Department. If any misconduct was committed by her, the same is required to be examined only under the Rules called The Railway Servants (Discipline and Appeal) Rules, 1968 (for short "Rules, 1968").

05. Having regard to the fact that petitioner is a permanent employee of the Railway Department she should have been subjected to disciplinary proceedings under Rules, 1968. The same has not been appreciated by the CAT, hence, impugned order of termination dated 05.08.2021 and order of the CAT dated 05.04.2022 are liable to be set aside.

06. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that the petitioner has suppressed material information at the time of joining service on compassionate ground. Having regard to the conduct, the petitioner is not entitled to continue in service. In this regard, learned counsel for the respondents cites decision of Hon'ble Apex Court in the case of **The Secretary A.P. Social vs. Sri Pindiga Sridhar & Ors. [Appeal (Civil) No. 1470 of 2007]** decided on 19.03.2007.

07. Heard learned counsels for the respective parties.



08. Petitioner was appointed on compassionate ground in the year 2017. Her services were terminated in the year 2021. In the meanwhile, she had gained permanent status in the Railway Department. In the result, even any misconduct is committed at the time of her appointment, she should be subjected to inquiry under the Rules, 1968. Rule 3 of 1968 Rules reads as under:-

"3. Application - (1) *These rules shall apply to every Railway servant but shall not apply to-*

(a) any member of the All India Services;

(b) any member of the Railway Protection Force as defined in the Railway Protection Force Act, 1957 (23 of 1957);

(c) any person in casual employment; and

(d) any person for whom special provision is made, in respect of matters covered by these rules by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may, by order, exclude any class of Railway servants from the operation of all or any of these rules."

09. In the light of aforesaid statute, respondents should have resorted to initiation of inquiry against the petitioner while invoking various provision of Rules, 1968. On the other hand, they



have resorted to the issuance of show cause notice and proceeded to terminate her services. In other words, respondents have resorted to short-cut method of terminating service of the petitioner. Cited decision does not assist the respondents for the simple reason that the petitioner had status of permanency in the Railway Department if any misconduct is committed by her at the time of joining service it amounts to misconduct. In the result, provision of Rules, 1968 is attracted. Therefore, the cited decision is distinguished having regard to the facts of the case. Moreover if Respondents noticed the alleged irregularities in the compassionate appointment before completion of probation, in such an event Rules, 1968 may not attract and procedure of issuance of show cause notice may be sufficient. Whereas petitioner is permanent employee or Railway Servant, therefore Rules, 1968 is to be adhered for any alleged misconduct.

10. In the light of these facts and circumstances, petitioner has made out case so as to interfere with the order of termination dated 05.08.2021 read with CAT order dated 05.08.2021 passed in O.A. No. 050/00234/2022. They are hereby set aside.

11. The concerned respondent is hereby directed to regulate the intervening period from the date of termination till



reinstatement as duty for all purposes. The arrears of salary shall be calculated and disbursed in her favour. The present order shall not come in the way of initiating inquiry under Rules, 1968 and complete the proceedings within a period of six months from the of receipt of this order. The petitioner shall co-operate in the disciplinary proceedings to be conducted.

12. With the aforesaid observations, the present writ petition stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

