

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23163 of 2019

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Manju Sahay wife of Late Smriti Bihari Sahay Resident of Balipur
Machharhatta, P.O. Barh, P.S. Barh District- Patna, (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O. Digghi Kalan, P.S. Hajipur, District- Vaishali at Hajipur, Pin Code- 844101, Bihar.
2. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O. Khagaul, P.S. Danapur, District- Patna, Pin code- 801501, Bihar.
3. The Assistant Commercial Manager, East Central Railway, Danapur, P.O. Khagaul, P.S. Danapur, District- Patna, Pin Code- 801501, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Ms. Swastika, Advocate
Mr. Sanjay Kumar Dixit, Advocate
For the Respondent/s : Mr. Praveen Kumar Sinha, Advocate, S.P.C. for U.O.I.

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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 : 23-01-2023

In the instant writ petition, petitioner is legal heir of the deceased employee-Smriti Bihari Sahay. The deceased railway employee was subjected to disciplinary proceedings. Article of charges were issued on 20.03.2007, it was concluded in imposition of penalty of reduction of pay of Rs. 4,600/- to 3,200/- for a period of six years with cumulative effect on 02.02.2009. The deceased employee preferred appeal before the Appellate Authority and it was not decided for about five years. General



Manager invoked Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short 'Rules 1968') and proceeded to issue a show cause notice on 17.12.2013 to the extent why the penalty imposed by the Disciplinary Authority dated 02.02.2009 shall not be enhanced. The deceased employee furnished his reply on 21.01.2014. Thereafter, General Manager enhanced the penalty to the extent of reducing initial stage of next lower grade for a period of eight years with cumulative effect on 16.04.2014.

02. Feeling aggrieved and dissatisfied with the Disciplinary Authority's order dated 02.02.2009 and in not deciding the deceased employee's appeal, the deceased employee filed O.A No. 482 of 2012 before the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT'). During the pendency of O.A. No. 482 of 2012, the General Manager has taken steps to enhance the penalty. In the result, deceased employee questioned the validity of the enhancement of penalty dated 16.04.2014 in O.A. No. 482 of 2012. O.A. No. 482 of 2012 was dismissed, hence the present writ petition.

03. During the pendency of the present petition deceased employee-Smriti Bihari Sahay died and his legal heir Mrs. Manju Sahay is on record and pursuing the present writ petition.

04. Learned counsel for the petitioner submitted that



along with the charge memo one document has been cited in support of the charge, such document was not marked in the inquiry so as to prove the alleged charge. It is further submitted that there is a total inaction on the part of the Appellate Authority and General Manager. Appellate Authority has not decided the deceased employee's appeal even after lapse of five years from the date of imposition of penalty, on the other hand, when the appeal was pending consideration before the Appellate Authority, next higher Authority-General Manager proceeded to issue show-cause notice as to why penalty imposed by the disciplinary authority shall not be enhanced. He has enhanced the penalty on 16.04.2014, such exercise of power after lapse of five years is not appropriate and it is not permissible in the light of provisions under Rule 25 of Rules, 1968. It is also submitted that CAT has not appreciated the aforementioned contentions. In addition to the aforementioned grounds, learned counsel for the petitioner has raised a legal issue that Disciplinary Authority has failed to appoint Presenting Officer in terms of Rule 9(c). He has also cited decision of this Court dated 10.10.2022 passed in ***C.W.J.C. No. 6738 of 2017 (Salim Ahmad vs. The Union of India and Ors.)***

05. *Per-contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that the



Disciplinary Authority has not committed any error so also next higher authority who has enhanced the penalty on 16.04.2014 and it was affirmed by the CAT. The Disciplinary Authority need not appoint Presenting Officer, therefore, the aforementioned contention of the petitioner is liable to be rejected.

06. Heard the learned counsel for the respective parties.

07. The deceased-Smriti Bihari Sahay was subjected to disciplinary proceedings on 20.03.2007 on certain alleged charge. It was concluded in imposition of penalty of reduction of pay from Rs. 4,600/- to 3,200/- for a period of six years with cumulative effect. Feeling aggrieved and dis-satisfied with the order of the Disciplinary Authority, petitioner preferred appeal and it was pending consideration for more than five years and it was ultimately not decided in the light of the fact that next higher authority-General Manager took a *suo moto* decision to enhance the penalty while issuing show-cause notice. Enhancement of penalty was ordered on 16.04.2014.

08. Learned counsel for the petitioner contended that documents cited along with the charge memo were not part and parcel of the inquiry before the Inquiring Authority. The sole document which has been cited, it was not presented and marked as exhibit in the inquiry before the Inquiring Authority. In the absence of production of document proving the alleged charge



would be contrary to law. In this regard, the Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank***, reported in, ***(2009) 2 SCC 570***, held that document cited is required to be marked in the inquiry before the Inquiring Authority. The Apex Court in the case of ***S.C. Girotra v. United Commercial Bank (UCO Bank)***, reported in, ***1995 Supp (3) SCC 212***, held that if a document is cited, the author of the document is required to be examined. In the present case, the document which has been cited was not marked in the inquiry.

09. It is submitted that Presenting Officer had not presented the case on behalf of the department before the Inquiring Authority. When the Disciplinary Authority proceeded to appoint Inquiring Officer, in that event, it was bounden duty of the Disciplinary Authority to appoint Presenting Officer to present the case on behalf of department in a departmental inquiry. The Inquiring Officer and Presenting Officer need not be appointed in such of those cases where the disciplinary authority himself proceed to hold inquiry, such a situation is not forthcoming in the present case, since Inquiring Officer has been appointed and who has held inquiry. In fact, Inquiring Officer has played dual role of Inquiring Officer and Presenting Officer, which is impermissible in law.

10. General Manager who has invoked Rule 25 of



Rules 1968, is highly belated, for the reasons that penalty was imposed on 02.02.2009 where as the show-cause notice for enhancement of penalty was issued on 17.12.2013, that too when the appeal was pending consideration before the Appellate Authority. At the best, General Manager could have requested the Appellate Authority to decide the deceased employee's appeal instead of invoking Rule 25 of Rules, 1968. These issues have not been taken note off by the CAT while deciding the O.A. No. 482 of 2012.

11. In the light of these facts and circumstances, the petitioner has made out a *prima facie* case on the legal issue that the disciplinary authority has committed glaring error in not appointing Presenting Officer to present the case on behalf of the department and further in not producing the cited document in the charge memo in order to establish the charge before the Inquiring Authority. Reasons have not been assigned by the General Manager as to why enhanced penalty was warranted after lapse of five years from the date of Disciplinary Authority's order. In other words, there is total non-application of mind. Further, it is to be noted that General Manager has enhanced the penalty to reduce initial stage of next lower grade for eight years with cumulative effect without noticing that deceased employee was due for retirement on 30.11.2017, in other words, within eight years



deceased employee was to retire, on the other hand, enhanced penalty was imposed beyond retirement.

12. Accordingly, the petitioner has made out a *prima facie* case, so as to interfere with the order of penalty dated 02.02.2009, 16.04.2014 and orders of CAT dated 08.09.2016 and 31.05.2019 are set aside. The writ petition is allowed.

13. The concerned respondent is hereby directed to extend all service benefits which were due to the deceased employee and calculate monetary benefits from 02.02.2009 to till 30.11.2017 i.e. the date on which the deceased employee had retired from service. Monetary benefits shall be disbursed within a period of three months from the date of receipt of this order, failing which, writ petitioner is entitled to interest @ 8% per annum on all arrears amount.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	31.01.2023
Transmission Date	

