

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.104 of 2018

In
Civil Writ Jurisdiction Case No.17916 of 2017

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1. The Union of India through the General Manager, East Central Railway, Hajipur (Bihar).
 2. The General Manager Personnel, East Central Railway, Hajipur, Bihar.
 3. The Divisional Railway Manager, East Central Railway, Danapur, Bihar.
 4. The Additional Divisional Railway Manager, East Central Railway, Danapur Division, Danapur Bihar.
 5. The Senior Divisional Electrical Engineer (G), East Central Railway, Danapur Division, Danapur (Bihar).
 6. The Section Engineer (Electrical), East Central Railway, Kiul, Bihar.

... .. Petitioner/s

Versus

- 1.1. Arbind Rai son of Late Panchhi Lal residing at Vatbalia, P.O.-Suthiyar, P.S.-Darni Bazar, Dist.-Saran, Pin-841222.
- 1.2. Baldeo Rai son of Late Panchhi Lal, residing at Vatbalia, P.O.-Suthiyar, P.S.-Darni Bazar, Dist.-Saran, Pin-841222.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Dr. Anand Kumar, Advocate.
For the Opposite Party/s : Mr. Amar Nath Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY)
Date : 25.07.2023

Heard learned counsel for the parties.

2. This review petition is filed for the following
relief:-

The instant petition is being filed for
reviewing the order dated 11.01.2018
passed in C.W.J.C. No. 17916 of 2017
(Union of India and Others Vs. Panchhi



Lal) Passed by Hon'ble Mr. Justice Ajay Kumar Tripathi and Hon'ble Justice Smt. Nilu Agrawal whereby and whereunder the Hon'ble Court has dismissed the writ petition, challenging the order dated 25.05.2017 passed in O.A. No. 723 of 2013 by the Central Administrative Tribunal, Patna Bench, Patna.

3. The present review petition is filed against the judgement and order of this Hon'ble Court passed in C.W.J.C. No. 17916 of 2017 (Union of India and Others Vs. Panchhi Lal) dated 11.01.2018 by which this Hon'ble Court has dismissed the C.W.J.C. No. 17916 of 2017 filed against the judgement and order of the Central Administrative Tribunal, Patna Branch, Patna (hereinafter referred to as "the Tribunal") in O.A. No. 723 of 2013 dated 25th May, 2017.

4. The brief facts for the purpose of deciding the present review petition are that the Panchhi Lal (hereinafter referred to as "the deceased") had filed O.A. No. 723 of 2013 dated 25th May, 2017 before the Tribunal assailing the order of removal from service passed by the Disciplinary Authority vide order dated 22.02.2010.

5. It is a case of the deceased before the Tribunal that he was initially appointed on 08.09.1977 and continued to work till 27.03.2003 to the full satisfaction of his superiors.



While he was working as the O.E.D. Grade III, Power House, Kiul, his wife become seriously ill and though he had intimated the same to his superiors, the leave was not sanctioned. That the deceased could not attend work as had to look after his four minor children as his wife who was seriously ill. When the deceased reported back to the duty, the authorities did not allow him to join and thereafter an enquiry was instituted against the deceased for unauthorized absence and he was removed from service with effect from 27.03.2003 to take effect from 19.02.2010. Even though the deceased had preferred a statutory appeal nothing was done and thereafter the deceased has approached the Tribunal. The Tribunal duly taking into consideration the fact that the deceased had an unblemished service record till 27.03.2003 has modified the order of removal with effect from 27.03.2003 passed by the Disciplinary Authority to that of compulsarily retirement with effect from 27.03.2003. Aggrieved thereby the petitioners has filed C.W.J.C. No. 17916 of 2017 before this Hon'ble Court and this Court vide order dated 11.01.2018 has dismissed the C.W.J.C. No. 17916 of 2017.

6. Learned counsel for the review petitioner has stated that by virtue of the dismissal of the C.W.J.C. No. 17916



of 2017, this Court has affirmed the order of the Tribunal without going into the merits of the case. The learned counsel has stated that the Tribunal had no jurisdiction to modify the order of removal with effect from 27.03.2003 to that of compulsory retirement. That the exercise of the power by the Tribunal was totally unwarranted and patently wrong and the Hon'ble High Court ought to have allowed the C.W.J.C. No. 17916 of 2017 filed by the petitioner.

7. Learned counsel for the review petitioner has further stated that the Tribunal ought not to have interfered with the order of the Disciplinary Authority which is finding of fact and that the Hon'ble High Court has erred in dismissing the C.W.J.C. No.17916 of 2017 and prayed this Hon'ble Court to allow the present review petition.

8. Learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the review petition. The Counsel has stated that the employee has died pending litigation and any order in the review petition likely to be passed by this Court will have an adverse impact on the family members of the deceased and prayed to dismiss the present review petition.

9. In Workmen of M/s Firestore Tyre and Rubber Co. of India P. Ltd. Vs. the Management (*AIR 1973 SC 1227*) the Hon'ble Supreme Court has held herein as under:-



“32.This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron and Steel Co. Ltd.* 1958 SCR 667 = AIR 1958 SC 130, case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter.

38. Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established,



either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicting victimization Under S. 11 A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S. 11-A”.

10. Having regard to the law laid down by the Hon’ble Supreme Court and also the fact that the employee has died, no useful purpose will be achieved by allowing the present review petition except harassing the family members of the deceased. Moreover the order of the Division Bench which is subject matter of the present review petition does not suffer from any infirmity or illegality which warrants any interference in the present review petition. The orders of the Tribunal modifying the order of removal with effect from 27.03.2003 to



that of compulsorily retirement with effect from 27.03.2003 is in consonance with the law laid down by the Hon’ble Supreme Court in Workmen of M/s Firestore Tyre and Rubber Co. of India P. Ltd. Vs. the Management and other judgements and this Hon’ble Court has rightly dismissed the C.W.J.C. No. 17916 of 2017 by upholding the order of the Tribunal.

11. Having regard to the above, we do not find any merit in the present review petition seeking review of the order passed in C.W.J.C. No. 17916 of 2017 (Union of India and Others Vs. Panchhi Lal) dated 11.01.2018 and the same is dismissed accordingly.

(P. B. Bajanthri, J)

(A. Abhishek Reddy , J)

shakir/-

AFR/NAFR	N.A.F.R.
CAV DATE	15.05.2023
Uploading Date	26.07.2023
Transmission Date	N.A.

