

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8820 of 2021

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Niroo Singh Wife of Rajendra Singh Ex-Helper Grade-II, Electrical, East Central Railway, Darbhanga, Resident of Nand Bhawan, Block Road, Narkatiyaganj P.S.- Narkatiyaganj (Town), District- West Champaran, Pin Code-845455 (Bihar)

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.o.- Dighi Kalan, P.S.- Hajipur Sadar, District- Vaishali, Pin Code- 844001 (Bihar)
2. The General Manager (Personnel) East Central Railway, Hajipur, P.o.- Dighi Kalan, P.S.- Hajipur Sadar, District- Vaishali, Pin Code- 844001 (Bihar)
3. The Divisional Railway Manager, East Central Railway, Samastipur, District- Samastipur, Pin Code- 848101 (Bihar)
4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, P.o.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar)
5. The Senior Divisional Electrical Engineer, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar)
6. The Senior Divisional Financial Manager, East Central Railway, Samastipur, P.O.- Samastipur, P.S.- Samastipur, District- Samastipur, Pin Code- 848101 (Bihar)
7. The Senior Section Engineer (Electrical), East Central Railway, Darbhanga, Pin Code - 846001 (Bihar)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit (M.P. Dixit), Advocate
Mr. S.K. Dixit, Advocate
Mr. S.K. Chaubey, Advocate
Mrs. Swastika, Advocate
Mr. Shailendra Kumar, Advocate
Mr. Punit Ranjan Dixit, Advocate



For the Respondent/s : Mr. Milind Raj Dixit, Advocate
Mr. Dr. K.N. Singh, ASG
Mr. Ratnesh Kumar, Sr. CGC
Mr. Aditya Anand, Advocate
Ms. Parul, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-10-2024

In the instant petition, petitioner has prayed for the following reliefs:

"A. For issuance of writ in the nature of certiorari for quashing / setting aside the order dated 22.10.2019 passed by the learned Central Administrative Tribunal, Patna Bench, Patna herein after CAT in Miscellaneous Application No. 050/00485 of 2016 as contained in Annexure-3 of the writ application whereby and whereunder the prayer of the petitioner for declaring / holding the uncommunicated Order of Removal from Service dated 01.04.2002 passed by the Respondent No. 4 which now been enclosed with written statement before the learned Tribunal as contained in Annexure-3 of the writ application as null and void in view of the Section 108 of the Indian Evidence Act as well as RBE No. 151 of 1991 circulated vide order dated 22.08.1991, has been negated the claim of the petitioner and the instant Original Application has been disposed of without



appreciating the aforesaid provision laid down under Section 108 of the Indian Evidence Act circulated by Railway Board in RBE No. 151 of 1991 dated 22.08.1991 which clearly says that “where action was initiated against an employee for an unauthorized absence who could not be traced despite best effort of police he shall be presumed as dead under Section 108 of the Evidence Act. The disciplinary action initiated shall be considered as on invalid ground and be annulled by the disciplinary authority. If penalty has already been ordered the annulment may be done by appellate / revisionary authority. The Revision or Review procedure will not be applicable in this. After dropping the action, other benefits as due like leave encashment, salary dues, retirement benefits, compassionate ground appointments etc. may be extended.

B. For issuance of writ in the nature of Certiorari for quashing / setting aside the order of removal from service dated 01.04.2002 together with the order dated 06.03.2009 both passed by the Respondent No. 4 as contained in Annexure – 1 & 2 of the writ application which is contrary to the Section 108 of the Indian Evidence Act circulated by Railway Board in RBE No. 151 of 1991 dated 22.08.1991 which clearly “where action was initiated against an employee for an unauthorized absence who could not be traced despite best effort of police he shall be presumed as dead



under Section 108 of the Evidence Act. The disciplinary action initiated shall be considered as on invalid ground and be annulled by the disciplinary authority. If penalty has already been ordered the annulment may be done by appellate / revisionary authority. The Revision or Review procedure will not be applicable in this. After dropping the action, other benefits as due like leave encashment, salary dues, retirement benefits, compassionate ground appointments etc. may be extended.

C. For issuance of an appropriate writ(s) / order(s) / direction(s) in the nature of Mandamus commanding the Respondents to grant accord family pension including settlement dues in favour of the petitioner henceforth alongwith all consequential benefits with statutory interest thereupon.

D. Any other appropriate relief(s) for which the petitioner may be entitled to be granted."

2. On 25.09.2024 co-ordinate Bench passed the following order:-

"Matter relates to disciplinary proceedings initiated against a missing person – employee. It is an ex-parte inquiry.

2. Perusal of Annexure-R/6, Inquiring Officer's report dated 02.08.2001, it is evident that even though inquiry proceedings is ex-parte, on the other hand Presenting Officer has not presented the



departmental case before the Inquiring Authority and the Inquiring Authority has not recorded presenting case on behalf of the departmental by the Presenting Officer. On the other hand, Inquiring Authority proceeded to decide the inquiry suo motu to that extent there is violation of Rule 9 of The Railway Servants (Discipline and Appeal) Rules, 1968. The respondents have not apprised as to whether the Presenting Officer has been appointed under Rule 9(c) read with Rule 9(10)(v). If such material is not placed on record before the next date of hearing, we have to presume that Presenting Officer has not played any role in presenting the departmental case before the Inquiring Authority to the extent it seems to be legal lacuna in concluding the ex-parte departmental inquiry. In other words, Inquiry Officer played dual role in a disciplinary proceedings viz., Inquiry Officer and Presenting Officer.

3. Relist this matter on 17.10.2024.”

3. Learned A.S.G. for the respondent Mr. Dr. K.N. Singh submitted on instruction that Rule 9 (12) and (17) of The Railway Servants (Discipline & Appeal) Rules, 1968 are exception to the extent of not appointing presenting officer. However, Rule 9 relates to procedure for imposing major penalties. Sub-rule (12) and (17) of Rule 9 read as under:-

“Rule 9:- Procedure for



imposing Major Penalties.

(12) The inquiring authority shall, if the Railway servant fails to appear within the specified time, or refuses or omits to plead, require the Presenting Officer, if any, to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a latter date not exceeding thirty days, after recording an order that the Railway servant may for the purpose of preparing his defence give notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule (6).

(17) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross-examined by or on behalf of the railway servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses or any points on which they have been cross-examined, but not on any new matter without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

4. These two provisions do not assist the respondents



for the reasons that stage of Rule 9 (12) and (17) would arise only as and when Presenting Officer was appointed to present the case on behalf of the Department before the Inquiring Officer. Therefore, it was bounden duty of the Disciplinary Authority to appoint Presenting Officer to present the case on behalf of the Department against the Delinquent Government Servant (D.G.O.). In identical matters in writ petition Nos. CWJC No. 1726 of 2020 and CWJC No. 4539 of 2024, we have taken a decision to the extent that in the absence of appointing Presenting Officer in a disciplinary proceedings entire disciplinary proceedings initiated and concluded by the Disciplinary Authority stands vitiated, since Inquiring Officer cannot discharge dual role in a disciplinary proceedings, like officer cannot act as Inquiry Officer & Presenting Officer.

5. It is a case of remand to the Disciplinary Authority to commence the Inquiry fresh from the defective stage in the light of Hon'ble Supreme Court decision in the case of **MD ECIL vs. B. Karunakaran** reported in (1993) 4 SCC 727 and **Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors.** reported in (2011) 5 SCC 142. However, in view of the fact that inquiry was required to be continued against missing person. Missing employee was missing from the family



with effect from 19.03.2001. Even to this day he is missing. Therefore one has to draw inference that there is a civil death after seven years from the date of missing. Therefore the respondents cannot initiate inquiry from the defective stage.

6. The aforementioned legal lacuna has not appreciated by the CAT. In fact Rule 9 (c) provide for appointment of Presenting Officer, if the disciplinary authority appoints Inquiring Officer and failed to appoint Presenting Officer and the same cannot be side tracked or ignored in the procedure. Therefore, there is serious error committed by the CAT in the impugned order. In fact court of law in a disciplinary proceeding would interfere if there is violation any of the statutory provision. In the present case there is violation of Rule 9 (c).

7. Accordingly, O.A. No. 050/00485 of 2016 filed before the Central Administrative Tribunal, Patna Bench stands allowed.

8. Respondents are hereby directed to settle monetary and other benefits if any in accordance with law to the petitioner in view of the fact that missing employee is treated to have been suffered a civil death. The monetary benefit shall be calculated and disbursed within a period of six months from the date of



receipt of this order.

9. Accordingly, writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.10.2024
Transmission Date	

