

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4539 of 2024

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Amit Neeraj Ekka Son of Late G. Ekka, Loco Pilot (Goods), East Central Railway, Din Dayal Upadhyay, Resident of Quarter No. 139, Defense Colony, Kankarbagh, Patna- 800020 (Bihar).

... .. Petitioner/s

Versus

1. The Union of India through The General Manager, East Central Railway, Hajipur, P.O. - Digghi Kala, P.S.- Hajipur (Town), District - Vaishali at Hajipur (Town), District - Vaishali at Hajipur, Pin Code - 841001 (Bihar).
2. The Additional Divisional Railway Manager, East Central Railway, Din Dayal Upadhyay - 232101 (UP)
3. The Senior Divisional Personnel Officer, East Central Railway, Din Dayal Upadhyay - 232101 (UP).
4. The Senior Divisional Electrical Engineer (Operation), East Central Railway, Din Dayal Upadhyay- 232101 (UP).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit, Advocate Mr. Sanjay Kumar Dixit, Advocate Mr. Sanjay Kumar Chaubey, Advocate Mr. Swastika, Advocate Mr. Shailendra Kumar, Advocate Mr. Milind Raj Dixit, Advocate
For the U.O.I.	:	Mr.Anand Kumar Ojha, Sr. Panel Counsel Mr. Manoj Kumar Singh, CGC

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

Date : 08-04-2024

Petitioner - Amit Neeraj Ekka was subjected to disciplinary proceedings based on the Preliminary enquiry report dated 31.01.2022, resulted in issuance of framing of article of charges on 22.02.2022. The regular enquiry was concluded in imposition of penalty of removal from service



on 29.04.2022 and in appeal on 13.01.2023, the appellate authority has affirmed the removal order. Thus, petitioner has filed O.A. No. 163 of 2023.

2. Central Administrative Tribunal Patna, Bench Patna, proceeded to dispose of OA/050/00163/2023 on 01.03.2023 in relegating petitioner to exhaust remedy of revision.

3. The petitioner feeling aggrieved by the order of the CAT dated 01.03.2023 passed in OA/050/00163/2023 preferred R.A. No. 050/00001/2023 and it was rejected on 30.01.2024. Hence, the present writ petition.

4. Learned counsel for the petitioner raised legal issue and other issues on merits.

5. In all fairness, CAT should have interfered on the ground of legal issues namely Prashant Kumar, Sr. DEE/OP/DDU was the disciplinary authority to the petitioner. He had participated in the fact finding authority alongwith his immediate senior namely Sri. Brajesh Kumar Yadav, Sr. DSTE and others. Sri Prashant Kumar, Sr. DEE/OP/DDU had initiated disciplinary proceedings in farming charge against the petitioner. Learned counsel for the petitioner submitted



that Prashant Kumar, Sr. DEE/OP/DDU who had participated in Preliminary enquiry report and being a member of the fact finding committee, he has already expressed his opinion about the alleged allegations leveled against the petitioner. Therefore, he is biased in initiation of departmental enquiry and its conclusion. It is further submitted that enquiry proceedings have been concluded by the enquiring authority in the absence of presenting officer. On these two issues, matter will go to the root of the matter so as to interfere with the impugned orders. The tribunal has failed to apprise if there are any legal issues involved in the matter in such circumstances, question of relegating the matter to the competent authority to exhaust the alternative remedy is incorrect in the light of various decisions of the High Court and the Hon'ble Supreme Court.

6. *Per Contra*, learned counsel for the respondent resisted the aforementioned contentions and submitted that there is no infirmity in the orders of CAT dated 01.03.2023 and 31.01.2024 both in OA and RA. Hence, no interference is called for.

7. Heard the learned counsels for the respective parties.



8. Petitioner was subjected to preliminary enquiry on certain allegations. In this regard, members of the enquiry committee was constituted and consisting of four officers. One of the officer is Prashant Kumar, Sr. DEE/OP/DDU who was disciplinary authority to the petitioner at the relevant point of time. He being a member of the enquiry committee cannot act as a disciplinary authority, since he is likely to be biased. Having regard to the fact that he is party to the Preliminary enquiry report submitted by the committee. That apart, before commencing departmental enquiry pursuant to the enquiry report submitted by the members of the enquiry committee, the disciplinary authority has not appointed the presenting officer to present the case on behalf of the department. These are all legal issues which were required to be taken note of for the purpose of entertaining the original application without resorting or directing the petitioner to exhaust alternative remedy.

9. Taking note of the legal issues, we are of the view that impugned order of removal and its confirmation by the appellate authority followed by relegating the petitioner to revisional authority vide order dated 01.03.2023 of CAT followed by rejection of RA dated 30.01.2024. All



these four orders dated 29.04.2022, 13.01.2023, 01.03.2023 and 30.01.2024 are set aside.

10. The official respondents are hereby directed to identify yet another the disciplinary authority other than Prashant Kumar, Sr. DEE/OP/DDU and regular enquiry shall be initiated in commencing framing of charges pursuant to the members of the Preliminary enquiry committee report and proceed to conclude the same within a period of six months from the date of receipt of this Order.

11. We are setting aside the impugned action of removal, affirmation in appeal and two orders of the CAT on technicality. Therefore, the disciplinary authority other than Prashant Kumar is hereby directed to take a decision as to whether petitioner was required to be reinstated or he shall be placed under suspension, such decision shall be taken within a period of one month from the date of receipt of this Order. After conclusion of departmental enquiry within a period of six months, thereafter, proceed to pass order regulating the intervening period from the date of removal till passing of final order as to how it has to be dealt with with reference to relevant provisions of Railway Servants Discipline and Appeal Rules, 1960.



12. Hon'ble Supreme Court in the case of *Managing Director, ECIL V. B. Karunakar* reported in (1993) 4 SCC 727 read with *Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha and Others* reported in (2011) 5 SCC 142 para 48 to 50, it is held as under:

48. In *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704: AIR 1994 SC 1074] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is



reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9 SCC 564: (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L& S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.

13. The Hon. Supreme Court in the case of ***State of Uttar Pradesh & Ors Vs Prabhat Kumar*** reported in ***2022 Livelaw (SC) 736*** reiterated that on technicality if any order is set aside in such circumstance the aforementioned



steps were required to be taken by the disciplinary authority/
competent authority.

14. Petitioner is hereby directed to co-operate
in the disciplinary proceedings to be commenced and
concluded.

15. Accordingly, the present writ petition
stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	10.04.2024.
Transmission Date	N/A

