

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1726 of 2020

Harendra Nath Prasad, Son of Sri Sidhnath Prasad, Ex Head Travelling Ticket Examiner, East Central Railway, Mugalsarai, Resident of Village and Post-Sahu Ka Dumari, P.S. Simari, District- Buxar (Bihar).

... .. Petitioner.

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 Chief Commercial Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S. Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
3. The Divisional Railway Manager, East Central Railway, Mugalsarai, District- Chandauli, Pin Code- 232101 (U.P).
4. The Additional Divisional Railway Manager, East Central Railway, Mugalsarai, District- Chandauli, Pin Code- 232101 (U.P).
5. The Senior Divisional Personnel Officer, East Central Railway, Mugalsarai, District- Chandauli, Pin Code- 232101 (U.P).
6. The Senior Divisional Commercial Manager, East Central Railway, Mugalsarai, District- Chandauli, Pin Code- 232101 (U.P).

... .. Respondents.

Appearance :

For the Petitioner	: Mr. Munna Pd Dixit (M.P. Dixit), Advocate. Mr. Sanjay Kumar Dixit, Advocate. Mr. Sanjay Kumar Chaubey, Advocate. Ms. Swastika, Advocate. Mr. Shailendra Kumar, Advocate. Mr. Milind Raj Dixit, Advocate. Mr. Punit Ranjan Dixit, Advocate.
For the Respondents- Union of India/Railway	: Mr. Ram Anurag Singh, CGC.

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

Date : 10-09-2024

Pursuant to our previous order dated 27.08.2024,
learned counsel for the respondents-Union of India/Railway on
instructions submitted that to present case on behalf of the



Department, presenting officer was not appointed in respect of conducting a departmental inquiry.

2. It is a serious lacuna in not following or adhering to the relevant Disciplinary Rules/Regulations. Co-ordinate Bench on 13.12.2022 in C.W.J.C. No.16752 of 2019 decided on the aforesaid issue that no presenting officer was appointed in a disciplinary proceedings.

3. In the light of the Co-ordinate Bench decision read with the fact that the presenting officer was not appointed in the present case, accordingly, the order of the penalty dated 18.08.2010 and the order dated 03.11.2016 passed in OA No.544 of 2012 and the order dated 11.09.2019 passed in R.A. No.050/00029 of 2017 by the Central Administrative Tribunal, Patna Bench, Patna, stand set aside. The matter is remanded to the disciplinary authority to proceed afresh from the defective stage, namely, in not appointing the presenting officer along with inquiring officer in terms of the relevant Rules/Regulations. The disciplinary authority is hereby directed to complete inquiry proceedings within a period of four months from the date of receipt of this order. Petitioner shall co-operate in such proceedings, failing which disciplinary authority may proceed in accordance with law like *ex parte*.



4. The present writ petition is allowed.

5. At this stage, learned counsel for the respondents- Union of India/Railway submitted that petitioner has not raised this issue at any earlier point of time.

6. It is a question of law and it can be raised at any point of time. Writ Court is a Court of first instance. New plea can be raised if it relates to question of law. Appointment of presenting officer is under Rules/Regulations. Further, it is to be noted that in the absence of presenting officer, the inquiring officer has played dual role of inquiring officer/presenting officer. In fact, inquiring officer should be neutral in a departmental inquiry. Therefore, there are every chances of biased while discharging dual role in a disciplinary proceedings. Accordingly, the aforementioned contention of the respondents stands rejected.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2024.
Transmission Date	NA

