

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S). No. 6710 of 2019

1. Union of India through General Manager, East Central Railway, PO & PS Hajipur, District – Vaishali (Bihar).
2. The Divisional Railway Manager, East Central Railway, PO & PS Dhanbad, District – Dhanbad (Jharkhand).
3. The Senior Divisional Electrical Engineer /TRD, East Central Railway, PO & PS – Dhanbad, District – Dhanbad (Jharkhand).
4. The Divisional Electrical Engineer / TRD, East Central Railway, PO & PS – Dhanbad, District – Dhanbad (Jharkhand).
5. The Assistant Electrical Engineer /TRD, East Central Railway, PO & PS – Dhanbad, District- Dhanbad (Jharkhand).

... **Petitioners**

Versus

Meraj Alam Ansari S/o late Kasim Ansari, R/o Baltharia, PO- Nagari, PS – Nimiyaghat, District – Giridih, Jharkhand, presently residing at Railway QR. No. 258 /B, Sick Line Colony, Gomoh, PO – Gomoh, PS- Hariharpur, District – Dhanbad (Jharkhand), PIN Code – 828401.

... **Respondent**

CORAM: HON'BLE DR. JUSTICE S.N. PATHAK
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioners	: Mr. Anil Kumar, Sr. Advocate, ASGI : Ms. Niki Sinha, CGC
For the Respondent	: Mr. Romit Kumar, Advocate : Mr. Arun Kumar, Advocate : Mr. Indra Bhushan Pd. Sinha, Advocate

28/12th November 2024

1. The instant writ application has been filed by the Petitioner – Union of India with a prayer for quashing and setting aside the order dated 30.11.2018 (Annexure – 8) passed in OA / 051/ 00058 /2017 and the order dated 31.05.2019 (Annexure -9) passed in RA/ 051/ 00028/ 2019 by the learned Central Administrative Tribunal (CAT), Patna bench, Circuit Bench at Ranchi whereby orders of disciplinary authority dated 19.09.2014, Appellate Authority dated 12.10.2015 and Revisional Authority's order dated 24.11.2016 have been quashed and also the Revision filed by the petitioners / respondent has been dismissed on the ground of limitation, when the respondent /applicant has obtained the order dated 30.11.2018 (Annexure -8) on the basis of forged and fabricated enquiry report.

Factual matrix

2. The respondent / applicant was working in the petitioner's organization as Chowkidar and on the ground of unauthorized absence from the duty for the period from 03.08.2011 to 07.01.2013, disciplinary proceeding was initiated against him. Resultantly, an Enquiry Officer was appointed to enquire into the matter. After following the procedure, the Enquiry Officer concluded that the petitioner / applicant was absent from the duty due to his mental illness and he was getting his treatment done, therefore the absence from duty was not intentional. The report of the Enquiry Officer confirmed that the petitioner / applicant had submitted his medical certificates for the period from 05.08.2011 to 06.01.2013 certifying that he was suffering from mental illness. The Disciplinary Authority without assigning any valid and cogent reason, disagreed with the findings of the Enquiry Officer and imposed penalty of removal from service vide order dated 19.09.2014.
3. On appeal preferred by the petitioner / applicant, the said penalty order passed by the Disciplinary Authority was affirmed and revision application was also preferred which met with the same fate vide order dated 24.11.2016 thereafter, the orders were challenged in OA/ 051/ 00058 /217.
4. The Central Administrative Tribunal (CAT) after hearing the learned counsel for the parties, allowed the original application with a direction to reinstate the petitioner /applicant with all consequential benefits save and except the back-wages.
5. Aggrieved by the said order, the Union of India through General Manager, East Central Railway, has preferred this writ petition challenging the order passed by the Central Administrative Tribunal (CAT).
6. Learned Senior Counsel for the petitioner Mr. Anil Kumar vociferously argues that order of the Central Administrative Tribunal (CAT) is not tenable in the eyes of law, justifying the orders passed by the Disciplinary Authority, Appellate Authority as well as Revisional Authority. It has been argued that the petitioner was dismissed from services on the ground of unauthorized absence. On the basis of fake

certificates, the petitioner manipulated the enquiry report and obtained the order in his favour. He further submits that there was no any procedural illegalities the departmental proceedings and the order is of in accordance with law as well as fully justified. Learned counsel submits that an in-disciplined person cannot be allowed to continue in the services.

7. Learned counsel submits that neither any of the documents were submitted by the petitioner justifying his absence on medical grounds although two different certificates submitted by the petitioner / applicant shows different dates of treatment. It was also argued that petitioner / applicant was on unauthorized absence from the duty since 03.08.2011 without giving any information to the office the SSE/ ESI /GMI. The orders passed by the Disciplinary Authority has been affirmed by the Appellate Authority as well as Revisional Authority which requires no interference.
8. Learned Senior Counsel further argues that two types of enquiry reports were obtained. The legality and propriety of the enquiry report is doubted and the same is under cloud. On this pretext itself, the impugned order is fit to be quashed and set aside.
9. Learned counsel for the respondent by vehemently opposing the contention of the learned senior counsel emphatically argues that the impugned order is totally justified. The Central Administrative Tribunal (CAT) in the original application while passing the order has taken care of the procedural illegalities and, thereafter, has quashed the order of dismissal. Learned counsel submits that in total disregard to the settled principles of law, the Disciplinary Authority without differing with the enquiry report and assigning cogent reasons for such deviation and also by not issuing second show cause, has imposed major penalty which is not tenable in the eyes of law. He further submits that the Appellate Authority and Revisional Authority have emphatically affirmed the order of Disciplinary Authority in a most cryptic way which is non-speaking, capricious, mechanical and, as such, fit to be quashed and set aside.
10. Learned counsel further argues that for the first time before this Hon'ble Court a plea of fraudulently obtaining the enquiry report in favour of the

petitioner / applicant has been raised by the learned senior counsel which is impermissible in the eyes of law. Nowhere by the respondent before the Central Administrative Tribunal (CAT) when the original application was filed, this plea has been taken neither any chit of paper was brought showing a different enquiry report. The respondent- authorities who are petitioner in this case have tried to dupe this Court by making bold submissions. There was full of procedural illegalities and as such orders of the disciplinary authority, appellate authority and revisional authority have no legs to stand and the same are unsustainable in the eyes of law and rightly the said orders have been set aside by a Central Administrative Tribunal (CAT) which needs no interference.

11. Having heard the learned counsel for the parties at length, this Court is of the considered view that case of the original applicant / respondent before the Central Administrative Tribunal (CAT) needs consideration. It is crystal clear that the respondent-authorities, railways have tried to justify their stand in a most cryptic, capricious and mechanical manner. In a disciplinary proceeding, the authorities are bound to follow the procedure which is the mandatory requirement. In the instant case, the Disciplinary Authority has disagreed with the findings of the Enquiry Officer.
12. It is always open for the Disciplinary Authority to defer with the enquiry report but before differing with the enquiry report and for imposing major punishment, the petitioner / applicant is required to be noticed and a show cause must be issued assigning reasons as to why the Disciplinary Authority has differed with the enquiry report.
13. After obtaining the reply to show cause, a second show cause notice be issued seeking reply of the delinquent for imposing major punishment. In absence of all these procedures, the order passed by the Disciplinary Authority is not tenable and, as such, fit to be quashed and set aside.
14. The aforesaid view of this Court finds strength from the celebrated judgment the Hon'ble Apex Court in case of ***Punjab National Bank & Ors. v. Kunj Behari Misra***, reported in (1998) 7 SCC 84, relevant paras of which is reproduced herein below:

“17. These observations are clearly in tune with the observations in Bimal Kumar Pandit case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the Inquiry officer had given an adverse finding, as per Karunakar case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the Inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the Inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the Inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

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19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the Inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Inquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

- 15.** The original applicant was dismissed on the ground of unauthorized absence. The Enquiry Officer after considering every aspect of the matter has returned a finding that unauthorized absence was neither intentional

nor deliberate and it happened due to compelling circumstances. Admittedly, original applicant was suffering from mental illness during the period in question. He had also produced medical certificates which were duly considered by the Enquiry Officer. A wrong averment has been made by the respondent-railway, petitioner herein that no document was submitted. The arguments before the Central Administrative Tribunal (CAT) is totally fallacious and not based on any records.

16. The Hon'ble Apex Court in the case of **Krishnakant B. Parmar V. Union of India** reported in [(2012) 3 SCC 178] has held as under:-

“18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before this Court in M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919] wherein this Court held : (SCC p. 95, para 25)

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

In the instant case the authorities have accepted that absence of petitioner was neither deliberate nor willful rather it happened due

to compelling circumstances as petitioner met with an accident and was unable to perform his duties.

17. It has been rightly pointed out by the Central Administrative Tribunal (CAT) that orders passed by the Appellate Authority and Revisional Authority are non-speaking, capricious, cryptic and mechanical. The Appellate Authority while affirming the order has not assigned any reasons. The orders of the Disciplinary Authority cannot be affirmed mechanically and an independent finding has to be derived by the Appellate Authority and, thereafter, the affirmation on cogent grounds has to be made in absence of the same, the orders can be comfortably said to be mechanical and cryptic order. This Court is in full agreement with the orders passed by the Central Administrative Tribunal (CAT).
18. The Hon'ble Apex as well as this Court in plethora of judgments has held that when the order of punishment has been affirmed upto the Appellate Authority, the Hon'ble Court sitting under Article 226 of the Constitution of India should refrain itself from reappraising the evidences led in the departmental proceedings

The Hon'ble Apex Court in the case of **B.C. Chaturvedi Vs. Union of India & Ors., reported in (1995) 6 SCC 749** has held thus:

“The High Court does not act as appellant authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to the decision of a case on merit as an appellate authority.”

(ii) Insufficiency of materials cannot be a ground to annul the findings of the Enquiry Officer neither can a substituted view be taken in place of Enquiry officer/disciplinary authority in cases of departmental proceeding.

19. Issue of forged and fabricated enquiry report as well as certificates at this juncture has been raised which are not acceptable to this Court as neither of those documents have ever been produced before the Original Court nor any discussion on this point is there in the orders of the Disciplinary Authority or the Appellate Authority or Revisional

Authority and, as such, the same cannot be entertained. The order of the Central Administrative Tribunal (CAT) is hereby affirmed. The order passed by the Disciplinary Authority and Appellate Authority and Revisional Authority have already been quashed by the Central Administrative Tribunal (CAT) and, as such, the order passed by the CAT requires no interference and is affirmed.

20. However, the impugned order passed by the Central Administrative Tribunal (CAT) is modified to the extent that the original applicant /respondent before the Central Administrative Tribunal (CAT), is entitled for 25% back-wages. The said amount shall be calculated and paid to the original applicant / respondent along with other consequential benefits. The writ petition is devoid of any merit and the same is hereby dismissed. No orders as to cost.

21. Records of the original court be returned forthwith.

(Dr. S. N. Pathak, J.)

(Navneet Kumar, J.)

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