

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH AT RANCHI
OA/051/00741/18**

Date of Order: 12/09/2018

C O R A M
HON'BLE MR. A.K. PATTNAIK, MEMBER[J]
HON'BLE MR. PRADEEP KUMAR, MEMBER[A]

Arjun Rai, Son of Late Upendra Nath Rai, Chowkidar under Senior Section Engineer (Bridge), East Central Railway, Garhara, District- Begusarai, Pin Code- 851126 (Bihar), Residing at Qtr. No. 294/B, East Central Railway, Garhara, District- Begusarai, Pin Code- 851126 (Bihar).

..... Applicant.

-By Advocate: - Mr. M.P. Dixit

-Vrs-

1. Union of India through the General Manager, East Central Railway, Hajipur, PO- Digghi Kala , P.S.- Hajipur (Town), District- Vaishali at Hajipur, Pin Code- 841001 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O. – Digghi Kala, P.S.- Hajipur (Town), District- Vaishali at Hajipur, Pin Code- 841001 (Bihar).
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna, Pin Code- 801105 (Bihar).
4. The Additional Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District-Patna, Pin Code- 801105(Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna, Pin Code- 801105 (Bihar).
6. The Senior Divisional Engineer (Coordination), East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna, PinCode-801105(Bihar).

7. The Divisional Engineer (Bridge), East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna, Pin Code- 801105 (Bihar).
8. The Assistant Divisional Engineer(Bridge), East Central Railway, Danapur, PO - Khagaul, P.S.- Danapur, District- Patna, Pin Code- 801105 (Bihar).
9. The Senior Divisional Financial Manager, East Central Railway, Danapur, P.O.- Khagaul, P.S.- Danapur, District- Patna, Pin Code- 801105 (Bihar).
10. The Executive Engineer, Bridge/Line, East Central Railway, Hajipur, P.O.- Digghi Kala, P.S.-Hajipur (Town), District- Vaishali at Hajipur, Pin Code- 841001 (Bihar).
11. The Executive Engineer (Bridge), East Central Railway, Mugalsarai, District- Chandauli, Pin Code- 232101 (U.P.).
12. The Senior Section Engineer(Bridge), East Central Railway, Garhara, District- Begusarai, Pin Code- 851126 (Bihar).

..... Respondents.

-By Advocate - Mr. Prabhat Kumar

ORDER
[ORAL]

Per A.K. Pattnaik, J.M.:- Heard Mr. M.P. Dixit, learned counsel for the applicant and Mr. Prabhat Kumar, learned counsel appearing for the official respondents.

2. This OA has been filed under Section 19 of the AT Act, 1985 with the following prayers:-

“(i) That your Lordships may graciously be pleased to quash and set aside the impugned order of punishment dated 05.09.2018 as contained in Annexure A/20 together with so called Inquiry Report dated 23.04.2018 communicated on 18.07.2018 as contained in Annexure-

A/18 and Disagreement Note dated 13.02.2018 as contained in Annexure - A/16.

(ii) That your Lordships may further be pleased to direct/command the respondents to restore the status of Applicant with pay as was before the imposition of punishment dated 17.05.2012 as contained in Annexure-A/10 by reinstating him in service with all consequential benefits.

(iii) That your Lordships may further be pleased to direct/command the respondents to pay the arrears of salary along with statutory interest.

(iv) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.”

2. At the outset, Mr. M.P. Dixit, learned counsel for the applicant to sum up his argument submitted that due to some alleged misconduct the applicant was issued a major penalty chargesheet and while the matter was continuing the Inquiry Officer submitted a report to the Disciplinary Authority. Without giving any disagreement note, the respondent/Disciplinary Authority imposed the major penalty punishment of removal from service on 17.05.2012. Challenging the said order of removal the applicant approached this Tribunal in the first round of litigation by filing OA 1023/2012 which was ultimately decided in favour of the applicant vide order dated 11.12.2013. Shri Dixit brought to

our notice the concluding para of the said order which has been reflected in para-6 which runs as under:-

“6. In view of the above this Tribunal holds that the order passed by the Disciplinary Authority on 17.05.2012 (Annexure A/5) is bad in law and is therefore set aside. While passing these orders, this Tribunal, however, does not interfere either with the charges framed against the applicant or the inquiry conducted against him because the former are grave and there are no apparent shortcomings or lapses in regard to the latter. As such this Tribunal, after setting aside the order dated 17.05.2012 (Annexure A/5), remits the matter back to the respondents with direction to the Disciplinary Authority for reconsideration of the matter after providing prescribed opportunity(ies) to the applicant in terms of extant rules/guidelines/rulings in the matter and to pass a reasoned and speaking order, as appropriate. Action in terms of the above directions shall be initiated and completed by the respondents concerned within a period of three months from the date of receipt/communication of this order. Consequential benefits to the applicant shall be governed in terms of the fresh orders to be passed by the respondents in terms of the above directions. In sum the prayer of the applicant is allowed to subject to, and in terms of, the directions of this Tribunal in this OA.”

3. The learned counsel for the applicant further submitted that while disposing of this OA although the matter was remitted back to the Disciplinary Authority for reconsideration of the matter after providing prescribed opportunity to the applicant in terms of the extant

rules/guidelines/rulings in the matter and to pass a reasoned and speaking order, but it was not done so. Rather, by a speaking order dated 27.05.2014 the Disciplinary Authority although modified the major penalty punishment, but passed the following speaking order:-

“ Period from the date of removal of Shri Arjun Rai from Railway Service, i.e. from 17.05.2012 shall be treated as Dies Non”

“Further he shall be allowed to join in the lowest starting pay scale of his cadre chowkidar, i.e. pay scale Rs. 5200-20200/- + Grade Pay Rs. 1800/-.”

“Further no payment consequential benefits shall be admissible to Shri Arjun Rai for the period (date of removal) 17.05.2012 to date of joining. Further in grade pay Rs. 1800/-.”

4. Being dissatisfied with such an order the applicant approached the Tribunal for the second time by filing OA 855 of 2014 which was ultimately disposed of with the following observations:-

“13. The Tribunal has already held in that order that the proceedings upto that stage, i.e. charge-sheet and inquiry do not suffer from any apparent shortcomings or laches. Therefore, the legal flaw has to be cured from the stage of serving the copy of the Inquiry Report and the Disciplinary Authority's findings, i.e. agreement or

disagreement and detailed note of disagreement, as the case may be. Instead of that, the respondents have simply passed an order dated 27.05.2014³ by which the applicant has been allowed to join in the lowest starting pay scale of his cadre, i.e. Rs.5200-20200+Grade Pay 1800. Further, the period from the date of removal from 17.05.2012 to date of joining has been treated as dies non.

14. Since the respondents on their own have decided to induct the applicant even without following the due process as mandated in the Tribunal's earlier order dated 11.12.2013, we need to modify our relief in order to be consistent with the earlier judgment and in order not to take away the benefit given by the authorities to the applicant. Accordingly, it is directed that the Disciplinary Authority shall initiate the process afresh from the stage of serving the copy of the Inquiry Report along with his findings of agreement or disagreement note in order to allow the applicant to make a representation. After considering the charge memo, the inquiry report, the Disciplinary Authority's tentative findings and the applicant's representation, the Disciplinary Authority shall pass an order afresh. Till such time the benefits given to the applicant under the order dated 27.05.2014 shall not be disturbed, which would be modified in terms of the fresh order passed by the authorities, as directed above. The respondents shall comply with this direction within a period of three months from the date of receipt/production of a copy of this order.

15. The OA is disposed of in terms of above observations. No order as to costs.”

5. Then the applicant informed the respondents enclosing the copy of the order dated 14.11.2017 passed in the said OA 855/2014, but again the Disciplinary Authority without giving any opportunity to the applicant issued a disagreement note which has been annexed as Annexure A/16 of the OA. Mr. Dixit forcefully argued and brought to our notice that this order under Annexure A/16 can never be termed as a disagreement note because the findings of the IO and the reasons for difference have not been clearly spelt out in the aforesaid order. We are quite satisfied with such a submission made by the learned counsel for the applicant that Annexure A/16 cannot be termed as a disagreement note because the point of disagreement and the point of finding by the IO has not been described at length. The next leg of contention of the learned counsel for the applicant is that he immediately availed the departmental remedy by preferring a representation to the Disciplinary Authority vide Annexure A/17 after which from the bolt of the blue an order was passed by appointing one Mr. Brajesh Kumar as the Inquiry Officer. By drawing our attention to the original charge memo in

which the solitary listed witness the same Brajesh Kumar Mr. Dixit submits that the self same person was the solitary witness by the official respondents sole person against the charge memo issued to him earlier he cannot be made as the Inquiry Officer because he is already biased.

6. However, on the basis of such enquiry report again the respondents have issued the order dated 05.09.2018 which has been challenged in the instant OA.

7. On being questioned as to why the applicant has not availed the departmental remedy Shri Dixit fairly submitted that in spite of two categorical orders is being issued by this Tribunal on two different occasions the respondent authorities are not adhering to the said orders. Therefore, by filing an appeal the applicant does not expect any fruitful outcome on the said appeal. In this context the learned counsel for the applicant brought to our notice the order passed by Lucknow Bench in OA No. 706/2001 decided on 09.05.2002.

8. On the other hand, the learned counsel for the applicant submitted that the applicant did not want to file any

contempt petition due to non availability of regular Division Bench at Patna/Ranchi Circuit Bench. We are quite satisfied with the submission made by the learned counsel for the applicant.

9. Mr. Prabhat Kumar, learned counsel for the official respondents submitted that he is yet to receive a copy of the OA and therefore at present he does not have any immediate instruction regarding the averments made and the contentions raised in the present OA.

10. We are quite satisfied with the submission made by Mr. Kumar and therefore we think it appropriate to quash the order dated 05.09.2018 and remand the matter back to the respondent no. 10 to re-consider the entire issue keeping in mind the observations made above and start the enquiry proceeding from the stage the applicant was continuing on the date of issuance of the first chargesheet by granting him proper opportunity to defend his case and by appointing an Inquiry Officer afresh who should not have been a party to the earlier proceeding and after granting proper opportunity to the applicant by following the principles of natural justice the Disciplinary Authority may come to a final conclusion. We also made it clear

that if after receipt of the Inquiry Officer's report the Disciplinary Authority has such a reservation that a detailed disagreement note may be given to the applicant with sufficient time so that he can represent against the said disagreement note.

11. With the aforesaid observation and direction, this OA is disposed of by remanding this matter back to the said respondent no. 10 along with some judgment which has been given by Mr. Dixit. As prayed by Mr. Dixit, a copy of this order along with paper book and the judgment may be transmitted to the respondent no. 10 by Speed Post for which Mr. Dixit undertakes to deposit the cost within seven days.

12. We also reiterate that maintaining the judicial discipline the respondent no. 10 should immediately implement the orders passed by the earlier Division Benches of this Tribunal with regard to his earlier place of posting on his designation and pay till the disciplinary proceeding comes to an end.

[Pradeep Kumar]/M[A]

[A.K. Pattnaik]/M[J]

Srk.