

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00564/2018

Date of order 02.05.2019

CORAM
HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)
HON'BLE DINESH SHARMA, MEMBER (A)

Om Narayan Singh, son of Sri Nageshwar Singh, Substitute Safaiwala, under Chief Health Inspector, East Central Railway, Garhara, District – Begusarai, PIN -851116 [Bihar].

..... Applicant.

By advocate: Sri M.P. Dixit.

Verses

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, PIN CODE- 844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-Digghi Kala, P.S.-Hajipur (Town), District-Vaishali at Hajipur, PIN CODE- 844101 (Bihar).
3. The Chief Medical Director, East Central Railway, Hajipur, P.O.-Digghi Kala, P.S.-Hajipur (Town), District-Vaishali at Hajipur, PIN CODE- 844101 (Bihar).
4. The Divisional Railway Manager, East Central Railway, Sonenpur, P.O. & P.S.- Sonepur, District, Saran, PIN CODE-841101 (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Sonenpur, P.O. & P.S.- Sonepur, District Saran, PIN CODE-841101 (Bihar).
6. The Chief Medical Superintendent, East Central Railway, Sonenpur, P.O. & P.S.- Sonepur, District Saran, PIN CODE-841101 (Bihar).
7. The Senior Divisional Financial Manager, East Central Railway, Sonenpur, P.O. & P.S.- Sonepur, District Saran, PIN CODE-841101 (Bihar).
8. The Senior Divisional Medical Officer, (Dental), East Central Railway, Sonenpur, P.O. & P.S.-Sonepur, District Saran, PIN CODE-841101 (Bihar).
9. Dr. Shalini Jain, Sr. Divisional Medical Officer, East Central Railway, Garhara, District – Begusarai, PIN Code 851116 [Biahr].
10. Sri S. K. Dubey, Assistant Health Inspector -cum-Inquiry Officer, Offic of Chief Medical Director, East Central Raiway, Hajipur, PO – Digghi Kala, PS – Hajipur [Town], District – Vaishali at Hajipur, PIN Code 841001 (Bihar).

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 Respondents.

By advocate: Sri B.K. Choudhary with Sri Binay Kumar.

O R D E R (ORAL)

JAYESH V. BHAIRAVIA, MEMBER [J] : - The applicant has

filed the present OA seeking the following reliefs : -

“8[1] That your lordships may graciously be pleased to quash and set aside the impugned inquiry report dated 29.05.2018 communicated through letter dated 31.05.2018 as contained in Annexure-A/6, which has been submitted at the behest and dictate of Vigilance Officials as evident from their letter dated 08.05.2018 and 21.05.2018 as contained in Annexure-A/2 and A/3 respectively when the respondent No.10 has already submitted his report on 03.08.2017 holding the charges not proved.

8[2] That your lordships may further be pleased to direct/command the respondents to post the applicant on regular basis treating his initial appointment on 08.04.1999 instead of 20.01.1976 for all purposes.

8[3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.

8[4] That your lordships may be pleased to quash and set aside the order dated 29.06.2018 issued by Respondent No.9 as contained in Annexure[R/1] enclosed with the written statement dated 23.08.2018.”

2. In the instant OA, the applicant has prayed for quashing and setting aside the impugned Inquiry Report dated 29.05.2018 communicated through letter dated 31.05.2018 [Annexure-A/6] and the order passed by Disciplinary Authority dated 29.06.2018 [Annexure-R/1 of W/s] whereby he has been dismissed from service. The applicant has further prayed for a direction upon the respondents to post him on regular basis treating his initial appointment dated 08.04.1999 instead of 16.01.1976.

2. It is noticed that in an identical case, i.e. in OA/050/00611/2018, Narendra Kumar vs. Union of India & Ors. wherein this Tribunal has dealt with the issue with regard to charges leveled against the applicant-delinquent of the same department that on the basis of applicant's false declaration that he had past experience as Safaiwala since 1976 and on that basis had obtained employment as Casual Labour which is found irregular because at the relevant time, the period of so called work experience, the applicant

was minor and practically not possible to gain such work experience due to tender age. Therefore, the initial engagement of the applicant on the basis of his past experience has been found irregular. Accordingly, the charge memorandum was issued after continuous service of more than 12 years that too after the applicant-delinquent was granted temporary status in the year 2001-02 and declared successful in the screening test conducted in the year 2005 after duly scrutinized by the respondents themselves and thereby considered the applicant's service as temporary against Group-D post. The applicant has declared that he had never submitted any certificate of past experience and his engagement was as fresher and not based on any past experience. The said fact was corroborated by the order dated 2005 whereby he was declared successful in the screening test considering the service record. It is also noticed that during the enquiry the report of preliminary enquiry dated 12.04.1996 on which disciplinary proceeding was initiated was never supplied to him and without any sufficient prove the enquiry officer opined that the charges were partially proved against the applicant. Since the applicant had admitted that his engagement was not on the basis of any past experience. The said opinion of the enquiry officer is vague in nature and the disciplinary authority without considering the material on record in its true spirit in mechanical manner held that the charges leveled against the applicant is proved, and therefore, imposed the punishment of dismissal from service by issuing the aforesaid impugned orders.

The aforesaid disciplinary proceedings and charge memorandum are identical with the aforesaid OA No. 611/2018 wherein the said

punishment order of dismissal from service passed by the Disciplinary Authority has been found suffering from infirmities as also contrary to the law laid down by Hon'ble High Court of Patna in CWJC No.12812 of 2016 decided on 25.04.2017. The said impugned orders of punishment has been quashed and set aside with directions upon the respondents to consider the case of the applicant to reinstate him in service forthwith, preferably within a period of sixty days from the date of receipt of a copy of this order. In the present case also, in our view, same principle will apply as it is a squarely covered case. Thus, in the light of aforesaid discussions, the impugned orders in the present OA is quashed and set aside with directions to the respondents to respondents to consider the case of the applicant to reinstate him in service forthwith, preferably within a period of sixty days from the date of receipt of a copy of this order. No costs.

Sd/-
[Dinesh Sharma]/M[A]

Sd/-
[Jayesh V. Bhairavia)/M[J]

mps