

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12812 of 2016

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B. S. Chaturvedi, S/o Late R.B. Chaubey Ex-Senior Ticket Examiner, East Central Railway, Patna (Bihar) R/o at and P.O. - Khirauli, Dist. - Buxar (Bihar).

.... Petitioner

Versus

1. Union of India, through the General Manager, East Central Railway, Hajipur, Distt. - Vaishali.
2. The Chief Commercial Manager, East Central Railway, Hajipur, Distt. - Vaishali.
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.
4. The Additional Divisional Railway Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O. Khagaul, District - Patna.
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.
7. The Divisional Financial Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Awadh Bihari Ojha, Sr. Advocate
Mr. Nitesh Kumar, Advocate
Mr. Anand Vardhan, Advocate
For the Respondent/s : Mr. Shatrughna Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 25-04-2017

Petitioner was also the applicant before the Central Administrative Tribunal, Panta Bench, Patna in O.A. No. 863/2013.

The Prayer made by the petitioner before the Tribunal is as under :

“[8.1] That Your Lordships may graciously be pleased to quash and set aside the impugned part of the order dated 16/29.03.2012 as contained in



Annexure A/1 whereby the applicant has been awarded punishment of reduction to lower post of Senior Ticket Examination in Grade Pay of Rs. 2400 instead of retaining his status and Grade Pay of Rs. 4200.

[8.2] That Your Lordships may further be pleased to declare the Inquiry Report as contained in Annexure A/6 as null, void and perverse and any order issued on the basis of said inquiry report be quashed.

[8.3] That the respondents further be directed to restore the status of the applicant as Deputy Chief Inspector of ticket in the Grade Pay of Rs. 4200 with effect from the date of imposing punishment of compulsory retirement and difference of pay from 29.10.2010 up to the date of superannuation be directed to release with arrears and interest thereupon.

[8.4] That the respondents be directed to grant all consequential benefits including revision of his entire pensionary benefits in the Grade Pay of Rs. 4200 instead of Rs. 2400 along with arrears and interest thereon.

[8.5] Any other relief or reliefs including the cost of the proceeding maybe allowed in favour of the applicant.”

The Tribunal dismissed the OA holding that there was no infirmity and procedural lapse or violation of principles of natural justice in the disciplinary action taken against the applicant.



It also held that there are no grounds to interfere with the impugned order dated 16/29.03.2012 by which the order of punishment in revision was reduced from compulsory retirement to reduction to a lower post of Senior Ticket Examiner in grade pay of Rs. 2400/- instead of Rs. 4200/-

The origin to the present dispute arose on a so called vigilance check done on 6/7th March, 2007 in Train No. 2309 (Patna Rajdhani Express) which revealed so called presence of unauthorized passengers in AC coach, of which the petitioner was Travelling Ticket Examiner. The report of the vigilance that four persons were found travelling illegally formed the basis for initiation of a departmental proceeding. Despite the Enquiry Officer not finding the petitioner guilty in so many words, the disciplinary authority decided to impose punishment of compulsory retirement, which, later on in revision, was modified or replaced by the order of punishment of reduction to lower post of Senior Ticket Examiner. The effort of the petitioner to beget relief against the two punishments failed because the Tribunal felt that no violation of principles of natural justice or procedure has been committed by the authorities in award of punishment.

Learned Senior Counsel representing the petitioner submits that the Tribunal has committed a patent error of fact



and law, in holding that due procedure was followed, and, therefore, the order of punishment was a natural corollary, is a misnomer.

To get to the root of the matter, the counsel took the Court through the enquiry report, the statements of the various prosecution witnesses and sum essence of the outcome of the evidence, which is reflected in the concluding part of the report of the Enquiry Officer since it has a lot of significance to the present dispute. The Court would like to reproduce or extract part of the conclusions, which has been reached by the Enquiry Officer, which is as under :

“उपरोक्त परिचर्चाओं में स्पष्ट है, कि संयुक्त जाँच रपट (आरयूडी-4) के आलोक में कोचों में अनियमित यात्रियों के उपस्थिति को लेकर अभियोजन गवाह तथा कोर्ट गवाह के द्वारा स्पष्ट किए गए स्थिति में विरोधाभाष है। अभियोजन गवाह जहाँ एक ओर बर्थ संख्या 43 से 46 पर अवैध यात्री होने की बात कह रहे हैं वही कुछ कोर्ट गवाहों ने देखा नहीं, श्री ओझा ने देखा तो किस कोच में यह बता सकने में असमर्थ रहे। चूंकि आरयूडी-4 में यह उल्लेख किया गया है, कि अवैध यात्री न किराया देने में असमर्थता प्रकट की इस कारण मेमो दिया गया, जबकि यात्रियों का न तो कोई बयान अभिलेख पर है ना ही ऐसा कोई परिवाद कि उन्होंने आरोपी को किराया दे दिया है, इसी कारण कोर्ट गवाह, को बुलाना आवश्यक देखते हुए तथा आरोपी के मांग पर इसे स्वीकार किया गया। जिन्होंने अवैध यात्री के उपस्थिति पर ही प्रश्न चिन्ह खड़ा कर दिया है। यहाँ आरयूडी-4 के संदर्भ में यह प्रश्न अवश्य उठता है, कि सतर्कता दल जिसमें कई टी0टी0ई0 गण भी थे इन यात्रियों को क्यों नहीं चार्ज कराया गया था



नियमानुसार कार्यवाही की गई यह एक गंभीर प्रश्न है तथा जाँच पर प्रश्न चिन्ह खड़ा करता है। यहाँ यह भी ज्ञातव्य है, कि बर्थ संख्या 44 पर जिसे टर्न अपर दिखाया गया है, का पी0एन0आर0 संख्या वही है, जो बर्थ संख्या 20 एवं 21 पर के यात्री का है, जो टर्न अप है तथा बर्थ संख्या 46 आरक्षण चार्ट के अनुसार है ही नहीं। अतः सम्भावना है कि बर्थ संख्या 44 एवं 46 पर कोई अनियमित यात्री न रहा हो। (emphasis supplied)

परन्तु उपरोक्त सारे तथ्यों के बावजूद इस तथ्य को नजरअंदाज नहीं किया जा सकता कि कोच में जाँच के समय आरोपी भी उपस्थित रहा है और उसने बिना किसी आपत्ति के संयुक्त जाँच रपट (आरयूडी - 4) पर हस्ताक्षर किया गया है तथा यात्री को नियमित करने हेतु जारी मेमों प्राप्त किया। अतः आर0यू0डी0-4 के आलोक में मात्र बर्थ संख्या 43 एवं 45 पर अवैध यात्री की उपस्थिति का आरोप पृष्ठ होता है। जहाँ तक बर्थ संख्या 44 पर संदिग्ध प्रविष्टि का आरोप है, चूंकि बर्थ संख्या 44 पर यात्रा कर रहा यात्री बर्थ संख्या 20 एवं 22 पर यात्रा कर रहे यात्री का सहभागी है तथा वह एक ही पी0एन0आर0 है एवं यात्री उपस्थित है फिर इसकी सम्भावना नहीं दिखती कि 44 पर वह व्यक्ति यात्रा नहीं कर रहा था या प्रविष्टि संदिग्ध थी पूरे मामले में यह कहा जा सकता है कि सतर्कता निरीक्षक द्वारा सर्वप्रथम संयुक्त रूप से कोच में कुल उपस्थित यात्रियों की गिनती कर उसका आरक्षण चार्ट से तुलना किया जाता तो इस प्रकार के विवाद से बचा जा सकता था। (emphasis supplied)

अतः आरोप का आंशिक रूप से पुष्टि होता है।

7.00 – निष्कर्ष :- अभियोजन द्वारा प्रस्तुत साक्ष्य एवं साक्षियों तथा आरोपी द्वारा प्रस्तुत बचाव पर की गई उपरोक्त चर्चाओं पर बिना किसी पूर्वाग्रह के विचार करने पर यह निष्कर्ष निकलता है, कि आरोपी के विरुद्ध लगाया गया आरोप आंशिक रूप से सिद्ध होता है।”

The evidence, in other words, do not support the allegation against the petitioner that there were unauthorized



passengers travelling in the train on the date of the vigilance raid. From enquiry it emerges that at the four berths on which the so called illegal passengers were travelling i.e. Berth No. 43 to Berth No. 46, it was found that there was no Berth No. 46 in the boggy, therefore, the number of unauthorized passengers get reduced to three in number. The further finding, which has emerged during course of enquiry, is that no unauthorized person was found actually travelling as no charges had been recovered from the unauthorized passengers, which was mandated to be done, if they were unauthorized. And to make it worse, it seems that with a common PNR there were three passengers, but they were found to be travelling on yet another berths 20 & 21. Therefore, the allegation of unauthorized passengers being allowed to travel vanishes and gets demolished in the detailed enquiry which was held against the petitioner. It was for this reason that the Enquiry Officer opines that it was much a do about nothing. If the list of passengers were tallied with the actual passengers, the whole controversy could have been easily avoided and there would have been no occasion to make a small issue into a big issue.

Yet another submission made on behalf of the petitioner is that there is an error committed by the Enquiry Officer when he has recorded his opinion that the charge is partially



proved, which in turn, is a contradiction in terms and more so what was found to be partially proved has been left delightfully vague by the Enquiry Officer. If these are the foundational facts and findings, the submission is that could it form the basis for imposition of punishment of compulsory retirement which has serious consequences for the employee and in turn his family. What was the basis for the disciplinary authority to come to a conclusion that the charges were established when the Enquiry Officer did not say so in so many words, in fact, his finding is otherwise.

It was not even one of those cases where there seems to be a difference of opinion, and, therefore, a notice of difference, with the material and evidence from which difference emerged was adopted before issuing the punishment order of compulsory retirement. If that is so, then it is the stand of the petitioner's counsel that the punishment becomes vulnerable in the eye of law. If the punishment of compulsory retirement itself becomes vulnerable then any order passed in furtherance thereto modifying the order of punishment by the revisional authority also becomes suspect in the eye of law.

Learned counsel representing the Railways with a vehemence submits that it was a case of acceptance of guilt, nothing much was required to be done and this vehemence emerges



from the so called memo of the vigilance team, a copy of which is at page 40 of the writ application and the same document has also been produced today by the counsel for the Railways. His interpretation given to the said document is that since this was received by the delinquent i.e. the petitioner, therefore, it is a kind of confession and acceptance of guilt. The Court, therefore, would like to reproduce the memo and the contents thereof, which is as under :

मेमो

आज दिनांक 07.03.2007 को जाँच के दौरान Train No. 2309 A/4 में 44 , 45 , 46 , 43 पर कुल चार unauthorized passengers यात्रा करते हुए पाये गये।

अतः आप Coach Conductor Shri R.S. Chaturvedi (T.S.) अपना Charging करवायें एवं अपना स्पष्टीकरण दें।

With due respect to learned counsel for the Railways, if his line of argument is accepted to be correct, then we shall be turning the law on its head. The memo issued by the vigilance team is only an allegation and the signature or acceptance, which is being harped upon, is nothing more than accepting a copy of the said memo. If that receiving was enough to prove the guilt of the petitioner, why did the Railway authorities go through the rigors of holding a detailed enquiry with dozens of witnesses to prove the case, which they have miserably failed to do ?



In the opinion of this Court, such an argument on behalf of the Railways is a desperate argument, not worthy of consideration because a memo of insinuation not even a charge-sheet and acceptance thereof by the so called delinquent cannot be treated or labeled as confession or acceptance of guilt. The charges must stand or fail on the evidence which has come during course of enquiry and the Enquiry Officer despite all the hard work, which he had done, which is evident from reading the narration also fails to reach the conclusion of finding the petitioner to be guilty on the allegation in open and shut situation, regarding allowing unauthorized passengers.

If this is what emerges from the procedure which was held against the petitioner then with due respect even to the Central Administrative Tribunal their opinion that due procedure was followed and no natural justice was violated is a serious error committed on their part for the reason that they should have gone through the enquiry report and the findings which was reached by the Enquiry Officer which does not pronounce the petitioner to be guilty which necessitated severe punishment of compulsory retirement.

The Court, therefore, comes to a conclusion that serious prejudice has been caused to the petitioner by dismissal of



his OA by the Tribunal and refusal of the Tribunal to interfere with the order of punishments passed by the disciplinary authority of compulsory retirement and then the punishment of modification by the revisional authority of reduction on post and pay.

Orders dated 29.10.2010 (Annexure-4), 29.04.2011 (Annexure-3) and 16.03.2012 (Annexure-2) are set aside. Order dated 09.05.2016, passed by the Central Administrative Tribunal, Patna Bench Patna too is set aside. Writ application is allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
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