

(2020) 01 PAT CK 0203

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6279 Of 2018

Abhishek Anand

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Railway Servant (Discipline And Appeal) Rules, 1968 — Rule 9

Citation : (2020) 01 PAT CK 0203

Hon'ble Judges : Ashwani Kumar Singh, J;Partha Sarthy, J

Bench : Division Bench

Advocate : Munna Pd Dixit M.P. Dixit, S.K. Dixit, Sanjay Kumar Choubey, Swastika, Shailendra Kumar, Nivedita Nirvikar

Final Decision : Allowed

Judgement

1. The instant application has been filed for setting aside the order dated 28.11.2017 passed in OA No. 050/00497/16 by the Central Administrative Tribunal, Patna Bench, Patna whereby the learned Tribunal was pleased to dismiss the original application preferred by the petitioner holding that the punishment meted out to the petitioner in the departmental proceeding to be neither perverse nor disproportionate.

2. The relevant facts in brief are that while the petitioner was working as a Senior Ticket Examiner, East Central Railway and was posted at Rajendra Nagar, Patna, he was proceeded against departmentally and a charge sheet dated 04.09.2012 was served on him under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the 'Rules of 1968').

3. The charge against the petitioner was based on the report of the C.I.T/R.J.P.B, being of misbehavior during inspection by the Divisional Railway Manager. It was mentioned in the report that even after counselling, the petitioner misbehaved and interfered in the work. Based on the report, a proceeding under Rule 9 of the Rules of 1968 was initiated against the petitioner and a major penalty charge

sheet (Annexure-A/1) dated 04.09.2012 was issued. Along with the charge sheet the statement of article of charges framed against the petitioner, statement of imputation of misconduct or misbehavior in support of article of charge, list of document by which the article of charge framed against the petitioner was proposed to be sustained and list of witnesses by whom the article of charge framed against the petitioner was proposed to be sustained were enclosed. The petitioner submitted his reply to the charge sheet. After concluding the enquiry, the Inquiry Officer submitted his report dated 19.03.2014 (Annexure A/5) which was communicated to the petitioner. Subsequently, the petitioner received an order of punishment dated 27.11.2015 (Annexure A/6) whereby and where under the punishment of reduction of the petitioner's pay by two stages for a period of three years with cumulative effect was imposed. The petitioner preferred an appeal before the Divisional Railway Manager, East Central Railway, Danapur against the order of punishment, however, the same was rejected by order dated 09.02.2016 (Annexure A/8).

4. The petitioner preferred O.A no. 050/00497/16 before the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') praying therein for setting aside the order of punishment dated 27.11.2015 issued by Senior Divisional Commercial Manager, East Central Railway, Danapur as also against the order dated 9.2.2016 passed by the Additional Divisional Manager, East Central Railway, Danapur rejecting the appeal. By order dated 28.11.2017 the Tribunal was pleased to dismiss the original application preferred by the petitioner. The instant writ application has been preferred against the said order dated 28.11.2017 passed by the Tribunal in OA no. 050/00497/16 as also for setting aside the order of punishment dated 27.11.2015 and the order dated 9.2.2016 whereby the appeal preferred by the petitioner was rejected.

5. It is the submission on behalf of learned counsel for the petitioner that in the departmental proceeding initiated against him, after conclusion of enquiry, an enquiry report dated 19.03.2014 was submitted by the Inquiry Officer, a copy of which has been brought on record as Annexure A to the counter affidavit filed on behalf of the respondents. It has further been submitted that from perusal of the enquiry report it would transpire that the Inquiry Officer came to a finding that since the onus to prove the charge as brought out against the petitioner lay on the prosecution, however, the prosecution witness nos. 2,3,4 and 5 changed their version as endorsed on the report and stated that they have not seen any nuisance created by the petitioner and that the report was prepared under the influence of the then T.I. to the Divisional Railway Manager. It was thus, submitted that inspite of the Enquiry Officer not having found the charge of misbehavior and interfering in working to be established against the petitioner, nevertheless the Senior Divisional Commercial Manager, East Central Railway, Danapur by his order dated 27.11.2015 proceeded to observe that the charge seemed to be proved and further proceeded to inflict the punishment and lowered (the pay scale of the petitioner) by two stages for a period of three years

with cumulative effect. It was submitted that no show cause was issued to the petitioner by the authorities concerned when they differed with the finding of the Inquiry Officer when in the enquiry report it was concluded that the charge of misbehavior and interfering in work could not be established. It was submitted that non-giving of opportunity to the petitioner before differing with the finding of the Inquiry Officer was in violation of the settled law as held by the Hon'ble Supreme Court in the case of Punjab National Bank & Ors vs. Kunj Behari Misra reported in (1998) 7 SCC 84. It was further submitted that so far as the charge against the petitioner of misbehavior under the influence of alcohol is concerned, from perusal of the joint report dated 21.07.2012 which has been brought on record as Annexure 2 to the supplementary affidavit filed on behalf of the petitioner it would clearly be evident that the said portion has been added subsequently in the report and more importantly, the same was not even a charge in the chargesheet (Annexure A/1 to the counter affidavit)

6. It has been submitted by learned counsel for the respondents that there is no illegality either in the order of punishment passed against the petitioner, the order rejecting his appeal or the order passed by the Tribunal which are impugned herein. It has further been submitted that from perusal of the enquiry report it would transpire that the Inquiry Officer came to the conclusion that the charge brought against the petitioner was partially proved. It was further submitted that as per medical examination report, the petitioner was not responding for sense of pain and the symptom found was due to alcohol which was also confirmed in the tests carried out. It was further submitted that once part of the charge was found to be established, there was no merit or substance in the submission made on behalf of learned counsel for the petitioner that the order of punishment had been passed by the authority concerned differing from the enquiry report. Thus, it was submitted that the law laid down in the case of Kunj Behari Misra (supra) would have no any applicability in the facts and circumstances of the case. It was finally submitted that there being no merit in the submissions made on behalf of the petitioner nor in the instant application, the same was fit to be dismissed.

7. We have heard learned counsels for the parties and have gone through the records of the case.

8. The facts which transpires are that on the basis of report of the CIT/RJPB, a charge sheet dated 4.9.2012 was served on the petitioner and he was proceeded against departmentally under Rule 9 of the Rules of 1968. From perusal of the charge sheet, a copy of which has been brought on record as Annexure A/1 to the counter affidavit, it would transpire that the charge as contained therein was that the petitioner had misbehaved during inspection by Divisional Railway Manager and even after counseling he misbehaved and interfered in work. It would be relevant to mention here that the chargesheet, to which the petitioner was directed to submit his reply did not contain any allegation/mention that he was under influence of alcohol.

9. The petitioner submitted his reply to the charge sheet and the enquiry proceeded. After conclusion of the enquiry, the Inquiry Officer submitted his report, a copy of which has been brought on record as Annexure A/5 to the counter affidavit in O.A no. 050/00497/2016 wherein it was held by the Inquiry Officer that the charge of misbehavior and interfering in work could not be established against the petitioner. However, differing with the enquiry report, the Senior Divisional Commercial Manager, East Central Railway, Danapur by the order impugned dated 27.11.2015 proceeded to hold that the charge seemed to be proved and inflicted the punishment of lowering the pay scale by two stages for the period of three years with cumulative effect. Further from perusal of the said order dated 27.11.2015 the Senior Divisional Commercial Manager, Danapur also held that from perusal of the relevant documents it was clear that the petitioner was in an intoxicated state.

10. With respect to the part of the order dated 27.11.2015 wherein the Senior Divisional Commercial Manager, Danapur held that the petitioner was in an intoxicated state, it may be stated here that bare perusal of the charge sheet dated 04.09.2012 would show that being under an intoxicated state was not even a charge against the petitioner nor did it find even an indirect mention in the charge sheet. Thus, in the facts of the case, neither the petitioner would be expected to meet a charge which was non-existent nor could it be held against him, as has been done in the order of punishment dated 27.11.2015.

11. Further in the enquiry report dated 19.8.2014 the Inquiry Officer clearly observed that 'onus to prove the charges as brought out against the C.O. lay on prosecution, the prosecution witness nos. 2,3,4 and 5 changed their version as endorsed on the said report and stated that they have not seen any nuisance created by the C.O. and the report was prepared under influence of T.I to DRM', and held that the charge of misbehavior and interfering in work could not be established.

12. Thus, inspite of the enquiry report not finding the charge to have been established, when the authority proceeded to pass the order of punishment, there remains no doubt that it differed with the finding of the Inquiry Officer in the enquiry report.

13. In the case of Kunj Behari Misra (supra) it has clearly been held that whenever the disciplinary authority disagrees with the enquiry 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 Hon'ble Apex Court proceeded to observe that the principles of natural justice 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.

14. In the facts and circumstances of the instant case, as narrated above, the authority which finally passed the order of punishment, not having given an opportunity to the petitioner to file a representation before recording its finding in disagreement to the enquiry report, clearly violated the principles of natural justice as also the law laid down in the case of Kunj Behari Misra (supra). Thus, in the facts and circumstances of the case, the orders of punishment dated 27.11.2015 and 09.02.2016 impugned herein as also the order dated 28.11.2017 passed by the Tribunal are illegal and not sustainable and as such all the three orders are set aside.

15. The writ petition stands allowed.