
(1987) 04 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2223 of 1981

Sarboy Narayan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-04-1987

Acts Referred:

Citation : (1989) PLJR 542

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Gautam Bose, for the Appellant; A.B. Ojha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Learned counsel appearing on behalf of the petitioner prays that his application for amendment be allowed. By reason of the said application for amendment the petitioner has challenged the order passed by the revisional authority which is contained in Annexure-9 to the amendment petition. Learned counsel appearing on behalf of the Railway Administration has no objection. Let the amendment prayed for, be allowed. In this writ petition the petitioner challenges the order as contained in Annexure-4 passed by the appellate authority as also the order contained in Annexure-9 passed by the revisional authority whereby and where under the appeal and the revision filed by the petitioner from an order dismissing him from service was in appeal. Mr. Gautam Bose, learned counsel appearing on behalf of the petitioner has raised a very short question. He submitted that the order of the appellate authority as contained in Annexure-4 suffers from vice of non-compliance of Rule 58 of the Railway Protection Force Rules. He further submitted that the order of the revisional authority contained in Annexure-9 to the writ petition also suffers from same vice. Rule 58 of the Railway Protection Force Rules reads as follows:-

Consideration of appeals.--(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether, in the light of the

provision of rule 40 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 41, the appellate authority shall consider-

(a) whether the procedure prescribed in those rules has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice.

(b) whether the findings are justified, and

(c) whether the penalty imposed is excessive, adequate, or inadequate; and pass order:

(i) setting aside, reducing, confirming or enhancing the penalty;

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such discretion as it may deem fit in the circumstances of the case:

Provided that--

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty, which the appellate authority proposes to impose is one of the penalties specified in clauses (a) to (d) of rule 41 and an inquiry under rule 41 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 47, itself hold such inquiry or direct that such inquiry be held and thereafter in consideration of the proceedings of such inquiry and after giving the appellant an opportunity of hearing any representation which he may wish to make against such penalty pass such orders as it may deem fit.

2. From a perusal of the said order it appears neither the appellate authority nor the revisional authority has taken into consideration as to whether the penalty imposed on the petitioner is excessive, adequate or inadequate. Mr. Bose submits that the appellate authority has not considered the other contention of the petitioner particularly relating to para 21 of Chapter XVI of the Railway Protection Force Rules, 1959.

3. In view of the fact that both the orders of the appellate authority as also of the revisional authority have not taken into consideration the factors enumerated under rule 58(2), particularly clause (e) thereof, I have no option but to allow the writ petition and remit back the case to the appellate authority for fresh consideration in accordance with law. The petitioner may, if so advised file

detailed representation before the appellate authority in which he may state as to whether he intends to have a personal hearing or not. With the above observations and direction the petition is allowed and Annexure-4 and 9 to the writ petition are quashed.