

(2016) 03 PAT CK 0100

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18905 of 2014.

Union of India and Others

APPELLANT

Vs

Bimal Prasad Pattnaik

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20
Constitution of India, 1950 — Article 226

Citation : (2016) 3 CLR 180 : (2016) 149 FLR 888 : (2016) 3 PLJR 556

Hon'ble Judges : Navaniti Prasad Singh; Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : D. K. Sinha, Sr Advocate with Sunil Kumar Ravi, Advocate, for the Appellant; Gautam Bose, Sr. Advocate with Shalendra Kr and Uma Kant Mishra, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J. - Having heard Shri D K Sinha, learned Senior Counsel for the Railways (writ petitioners) and Shri Gautam Bose, learned Senior Counsel for the sole contesting respondent, who was a railway employee, on several dates, with their consent, this writ petition is being finally disposed of.

2. The writ petition, as filed by the Railways (Union of India), is directed against order dated 03.01.2014 passed in OA No 64 of 2012 by the Central Administrative Tribunal, Patna Bench, Patna (for brevity, the Tribunal). By the aforesaid order, the Tribunal set aside the charge-sheet issued to the contesting respondent and also the consequential proceedings which, by now, had culminated in the order of removal from service with liberty to the Railways to reinstitute the proceedings after changing the disciplinary authority.

3. The events are somewhat complicated though there is no controversy on facts.

4. It appears that the sole contesting respondent, namely, Bimal Prasad Pattnaik (for brevity, the employee) was a Mail/Express Train Guard in the East Central

Railways posted at Gaya. While at Gaya, it appears that Railways administration had taken some action against some Guards in that region. In protest where to, there were dharna/procession and ultimately abuses being hurled at the Railway administration including the Senior Divisional Operating Manager (for brevity, the DOM) at Gaya. This led to a charge-sheet being issued to the employee on 14.07.2011 by Shri Sanjay Kumar, who was the then Senior DOM, East Central Railways posted at Mughalsarai. Assistant Operating Manager (for brevity, the AOM), Mughalsarai was appointed as Enquiry Officer by Shri Sanjay Kumar, the Senior DOM. The employee, while these proceedings were pending, on or about 12.01.2012, filed OA No 64 of 2012 before the Tribunal, to quash the charge memo as served upon him. It appears that in spite of repeated adjournments by the Tribunal, as the Railway was not being represented, the Tribunal heard the matter ex parte and reserved orders on 01.03.2012. It appears that the departmental proceedings were concluded by order of removal from service of the employee being order dated 19.03.2012 with effect from 20.03.2012. It further appears that on the same day, that is on 20.03.2012, in OA No 64 of 2012, the Tribunal, which had earlier reserved the order, passed orders setting aside the charge memo directing the Railways to replace the disciplinary authority as he was the Authority whom allegedly, the employee and others were abusing and, as such, he was a party himself. It may be noticed that when the Tribunal passed this order on 20.03.2012, no one brought to the notice of the Tribunal on 20.03.2012 that final orders had already been passed in the disciplinary proceedings. It then appears that Sanjay Kumar, who had been Senior DOM and who had been made respondent No 5 in OA No 64 of 2012, having come to know of the Tribunal's order, filed a review application being RA No 20 of 2012 before the Tribunal on 27.03.2012 stating that the Tribunal had wrongly set aside the charge memo as the Railways were not informed of the proceedings before the Tribunal and the case was wrongly treated as ex parte. While this Review Application 20 of 2012 was pending, the employee, having been visited with the order of removal from service, filed statutory appeal before ADRM, East Central Railways, Mughalsarai on or about 20.04.2012. The appellate authority allegedly sat over the order. The employee then filed another Original Application before the Tribunal on 11.08.2012 being OA No 696 of 2012. This OA was with a prayer to quash the removal order and for a direction to the appellate authority to dispose of the appeal. In our view, it is appropriate to say that the prayer was in alternative. At this juncture, we would like to notice that three proceedings, in relation to the employee, were pending. Firstly, there was a review application pending, being RA No 20 of 2012 which had been filed in OA No 64 of 2012. The second was the statutory appeal to the disciplinary appellate authority and the third was OA No 696 of 2012. They were all in relation to the same dispute that is the disciplinary proceedings and its effect in relation to the employee.

5. Now, it appears on 27.11.2012, the Review Application No 20 of 2012 was allowed and the earlier final order passed by the Tribunal dated 20.03.2012

disposing of OA No 64 of 2012 was recalled. At this juncture, we would like to make an observation. Once the Tribunal was now aware that final order had been passed in the disciplinary proceedings, having allowed the review application, it could not have heard OA No 64 of 2012 any further in view of bar as provided under Section 20 of the Administrative Tribunal Act (for brevity, the Act) which clearly bars the jurisdiction, if alternative remedy is available. Here, not only alternative remedy was available but had already been availed of by the employee. Instead, the Tribunal, having set aside its earlier order, proceeded to hear the matter on merit. Another important event took place. As noticed earlier, the employee has filed OA No 696 of 2012 challenging the order of removal from service, alternatively before the appellate authority, to dispose of the appeal. It tried to persuade the appellate authority to hear the matter but the appellate authority, on being told that the employee had moved the Tribunal, decided to await orders from the Tribunal being the superior authority. Thus, in the trilogy of events, there was a complete stalemate. The appellate disciplinary authority was awaiting the Tribunal. The Tribunal had two applications before it, one challenging the removal order and the other which had challenged the very charge-sheet before the removal order and none was progressing. The employee then unconditionally withdrew OA No 696 of 2012 on 19.02.2013 in which, challenge to the order of removal from service, was also there. Having done this, the employee then filed a Miscellaneous Application being MA No 333 of 2013 in OA No 64 of 2012 for amending the original application. The amendment sought was to allow challenge to the order of removal from service which order, as noted above, had earlier been challenged in OA No 696 of 2012 and which had been unconditionally withdrawn. The Tribunal, without taking note of these sequence of events, allowed the miscellaneous application and allowed the employee to amend OA No 64 of 2012 to challenge the order of removal which again, in our opinion, was in conflict with Section 20 of the Act inasmuch as the order of removal could not have been directly challenged before the Tribunal without going through statutory appeal which, the Tribunal was also aware, was pending. Ultimately, by the order impugned, the Tribunal allowed OA No 64 of 2012 as amended by setting aside the charge-sheet and consequently, the order of removal from service. In our view, the Tribunal was clearly in error as has been held in the case of *Sarjuga Transport Service v. State Transport Appellate Tribunal, MP, Gwalior and Others* since reported in (1987) 1 Supreme Court Cases 5.

6. Then again, MA No 333 of 2013 ought not to have been allowed for the simple reason that the challenge therein was to the order from removal of service whereas Section 20 of the Act was a bar on the Tribunal directly entertaining challenges without exhausting statutory remedies. The proper course for the Tribunal was to relegate the employee to the statutory appeal which was pending and then, upon decision by the statutory authority, leave it to the employee to decide the course of action. Instead, the Tribunal complicated the events and went in conflict with law.

7. Thus, on this issue itself, we cannot sustain the order of the Tribunal as passed in OA No 64 of 2012. It is to be set aside but at the same time, we direct the appellate authority to take up the appeal and decide it expeditiously preferably within a period of three months from today for we are informed at the Bar that the employee has since superannuated and in view of the orders and directions issued by the Cuttack Bench of the Tribunal, he has been paid his retiral benefits subject to the decision of the appellate authority and this writ petition pending before this Court. It is also made clear that the employee will not be permitted to raise any objection as to the right of the Railways to continue with the proceedings in view of his superannuation and would fully cooperate in the proceedings. The appeal would be heard on merit on all aspects of the matter.

8. With these observations and directions, this writ application is allowed.