

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

LIBRARY

No.O A.350/175/2015

Date of order : 15.1.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

P.K. CHATTERJEE  
VS.

UNION OF INDIA & OTHERS  
(S.E. Railway)

For the applicant : Mr. P.K. Nag, counsel  
For the respondents : Mr. S. Banerjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant in this O.A. has sought for the following reliefs:-

"a) An order be passed directing the respondent no.5 to set aside and/or annul the impugned charge-sheet dated 07.08.2007 (Annexure, A-10) as well as the impugned order of punishment dated 03.10.2008 (Annexure, A-13) issued by the respondent No.5 against the applicant.

And

b) An order be passed directing the respondent no.4 to set aside and/or annul the earlier non-speaking appellate order dated Nil passed by him which was communicated by the Disciplinary Authority vide his letter dated 17.10.2012(Annexure, A-18) as well as the order No.SER/R-KGPS/D & A/410/PKG dated 19.02.2014 (Annexure, A-21) passed by the Appellate Authority, the respondent no.4.

And

c) An order be passed directing the respondent no.3 to set aside and/or annul the impugned speaking order dated 25.08.2014(Annexure, A-23) issued by the Revising Authority.

And

d) An order be passed directing the respondents to reimburse the applicant's two increments which has not yet been paid to him and other consequential financial benefits as admissible along with 12% interest accrued thereon.

And

e) An order be passed directing the respondents to pay entire costs and incidental thereof to the applicant."

2. The speaking order dated 25.08.2014, the legality and propriety of which is under challenge in the present O.A., is extracted hereinbelow for clarity:-



SOUTH EASTERN RAILWAY

Office of the  
Controller of Stores  
Garden Reach/Kol-43

No: SER/P- HQ/D&A/410/P.K.C/ SP)

Dated 25.08.14

**Speaking Order,**

**Sub: Revision Petition dt. 01.04.2014 submitted by Sri. P.K. Chatterjee, Ex  
DMS/TD/Stores/KGP, against the Punishment order imposed by the D.A. vide  
No: E/Staff/D&A/PKC/2163/S dt. 03.10.08 upheld by the Appellate Authority's  
Order No: SER/P-KGPS/D&A/410/PKC dt. 19.02.2014.**

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I have gone through the cases in details. Sri. P.K. Chatterjee was transferred to ESD/KGP to take over the charges of DMS II by track depot Nimpura. Though Sri. Chatterjee joined at track depot Nimpura on 12.09.2006, but he did not take the charges of Ward NO. 8301 & 8302 in spite of repeated directives and advices.

In view of misconduct by Sri P.K. Chatterjee, he was served with Minor Penalty Charge sheet by the then Dy. Chief Materials Manager/GSD/KGP. After considering the reply submitted by Sri Chatterjee, the then Dy. Chief Materials Manager/GSD/KGP finalised the DAR Proceedings as per the laid down procedure and imposed the penalty of withholding two increments for a period of 24 months with non-cumulative effect and not affecting the Pensionary benefit.

Being aggrieved, Sri Chatterjee preferred an appeal against the penalty to the Appellate Authority, Chief Materials Manager (M)/GRC. The Appellate Authority upheld the punishment imposed.

Meanwhile, Sri Chatterjee, DMS II/Track Depot Nimpura was issued a Major Penalty Charge Sheet vide Dy. Chief Materials Manager/GSD/KGP's Memorandum No. E/Staff/D&A/P.K. Chatterjee/ 750/S dated 04.07.2010 for not taking over the charge of Ward No. 8301 & 8302. The enquiry against the Major Penalty charge Sheet was conducted by the Enquiry Officer, Assistant Materials Manager/Scrap Yard/KGP. The Enquiry Officer found Sri P.K. Chatterjee guilty (responsible for delay in handing over and taking over of charges). Sri P.K. Chatterjee, DMS II/Track Depot Nimpura took over the charge finally on 23.02.2011 i.e. nearly 04 years and after serving of two charge sheets (1 Major Penalty & 1 Minor Penalty).

After considering the enquiry report, Dy. Chief Materials Manager/GSD/KGP & Disciplinary Authority dropped the charges of Major Penalty leveled against Sri P.K. Chatterjee since he had already been punished with a Minor Penalty Charge Sheet for not taking over the charges.

From the case record it is observed that Sri P.K. Chatterjee was not co-operating with the stock verification of material at the time of handing over and taking over and different pretext was adopted by



Sri Chatterjee. The conduct of Sri Chatterjee is unbecoming of a public servant. The fact remains that Sri Chatterjee refused to take the charges of the Ward for 04 years on some pretext or the other.

The Major Penalty Charge Sheet against Sri Chatterjee got dropped on Technical Grounds on the plea of double jeopardy. The lapses of Sri P.K. Chatterjee is very serious and was fit for a Major Penalty, which could not be imposed due to technical reason even after Enquiry Officer found him guilty.

Therefore, the Revision Petition of Sri Chatterjee is rejected and I upheld the punishment imposed by the Disciplinary Authority.



*(Signature)*  
25-08-14  
(A.K.Panda)  
Controller of Stores,  
&  
Revision Authority.

3. The applicant has challenged the speaking order on the following grounds:-

- (i) The authorities have failed to consider that the minor penalty charge sheet dated 07.08.2008 was issued prior to finalisation of Special Accounts Stock Verification of Truck Depot, Nimpura and tried to convene all the inventory of the said stock verification that was completed on 25.09.2008;
- (ii) The Disciplinary Authority has erred in not mentioning the list of witnesses in the charge sheet which was violative of Rule 11(2)(1)(b) and 11(2) of Railway Servants(D&A) Rules;

(iii) The authorities failed to consider that the applicant after joining on 12.09.2006 was unable to take over charge from Private Respondent No.7 as most of the Depot materials were lying haphazardly in different places in the yards;

(iv) His comprehensive appeal disclosing procedural and substantive violation of law was not considered. The time limit as laid down in Board's letter dated 11.06.1971 for disposal of appeal was not adhered to. The currency of penalty completed on 02.10.2010 i.e. before his superannuation on 30.08.2011, but the increment which was withheld for 24 months in consequence of minor punishment, was not reimbursed which affected his pensionary benefits which is inconsistent with a minor penalty.

4. Per contra, the respondents have pleaded as under:-

(i) The punishment was imposed with non-cumulative effect not affecting his pensionary benefits;

(ii) The applicant preferred an appeal against the order of Disciplinary Authority before the Appellate Authority which has been disposed of with an observation that the penalty stands good;

(iii) The claim of the applicant that materials in Ward No.8301 and 8302 were lying haphazardly in different places is partly admitted along with his submission of a note dated 28.09.2006 to Respondent No.5. Despite that it was not possible to take over charges from outgoing Depot Material Superintendent Mr. R.K. Singh whereas the applicant failed to take over charges for 4 years despite repeated directions and advices.



(iv) The charged officer had asked for complete verification but when complete verification was agreed upon even then under different pretext he refused to sign the Daily Inventory Register and hence did not extend cooperation towards handing over of charge. Therefore, the charge was found to be proved.

(v) After finalisation of the proceeding the service record of the applicant was sent to Accounts Department for settlement dues and superannuation pension.

5. We heard the Id. counsels for the parties and perused the materials on record.

6. From the record we discern the following :-

The applicant had brought out the following points in his appeal:-

*"1) The disciplinary authority overlooked the difficulties to take over the charges of Ward No.8301 & 8302 of TD/NMP. KGP.*

*2) Several representations made by him on different dates to the competent authority has not been considered.*

*3) The disciplinary authority avoided latches and negligence of Sri R.K. Singh, the outgoing DMS Gr.III who did not want to hand over the charges of Ward No.8301 & 8302 properly and systematic way. Sri R.K. Singh wanted to handover the charges suppressing the irregularities and discrepancies in the charge list.*

*4) The letter dt.06.03.2010 of Sri R.K. Singh has not been considered by the D.A..*

*5. Sri R.K. Singh did not hand over the charges of DPWD 8301 & 8302 to him correctly.*

*6) The DA did not follow provisions laid down in sub-Rule-2 of Rule-11 of RS(D&A) 1968 wherein he did not cite any witness."*

and sought for exoneration from the charges.



7. The Appellate Authority upheld the penalty having found as under:-

"i) DA Authority has given adequate opportunity for him to make representations and has also entertained representations made by him subsequent to his original representation made against the Charge-sheet vide his letter dated 26.08.2007. DA has properly applied his mind on the representations.

ii) Shri Chatterjee has brought out the name of other Railway employee, Shri R. Singh, DMS/KGP which is not linked to the failure of Shri Chatterjee's performance for executing his superior's orders for which the Charge-sheet has been issued to him.

iii) Shri Chatterjee has also appealed that the provision laid down in sub-Rule 2 Rule 11 of RS(D&A) 1968 has not been followed, in the sense that DA did not mention a list of witness. On the subject, on going through the records, it is observed that Shri Chatterjee did not mention any witness from his side to defend his charges.

iv) Shri Chatterjee also did not invoke provision for seeking an enquiry against minor penalty which was available to him under RS(D&A) 1968.

In terms of direction of Hon'ble Court and in terms of Rule 22 of RS(D&A) 1968, the appeal has been considered on all the issues raised by Shri Chatterjee in his appeal. After considering the points raised in the appeal I come to conclusion that :-

- (1) The procedure laid down in these rules has been complied with.
- (2) Findings of the disciplinary authority are as warranted by the evidence on the record and
- (3) The penalty imposed is adequate and commensurate with the gravity of the offences.

In view of the above, I, the undersigned being the appellate authority in the case, decide that the punishment imposed by DA should "Stand Good."

However, Shri P.K. Chatterjee, the Appellant may prefer a review before the Revisionary Authority within 45 days, if so desires, using polite language."

8. Pursuant to the liberty given by the Appellate Authority and the Rules operating in the field the applicant preferred a revision petition under Rule 25 of Railway Servants (Discipline & Appeal) Rules on 01.04.2014 which was disposed of by a speaking order that is under challenge in the present O.A.



9. The authorities have found that the applicant was guilty and was responsible for the delay in handing over and taking over of charges. The Disciplinary Authority had dropped the major penalty charges levelled against the applicant. Since he was punished with a minor penalty the Revisional Authority rejected the Revision Petition whereafter he preferred a representation on 27.03.2014 to the APO, Stores alleging that he was receiving less pension and other settlement dues which appears to be not yet disposed of.

10. In **B.C. Chaturvedi v. Union of India & Others, (1995) 6 SCC 749**, the Hon'ble Apex Court on the scope of judicial review has held as under:

*"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether the inquiry was held by a Competent Officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the Disciplinary Authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."*

(emphasis added)



Laying down the scope of judicial review, the Hon'ble Apex Court in **Union of India v. P. Gunasekaran, (2015) 2 SCC 610**, has observed as under:

*"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an Appellate Authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the Disciplinary Authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:*

- (a) the enquiry is held by a Competent Authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case."*

11. We failed to decipher any procedural flaw in the manner enquiry was concluded and penalty was imposed. We note that the applicant never openly asked for an oral enquiry and never specifically denied the charge of late handing over and taking over. He has simply given excuses for the delay in handing over charge, which failed to move the respondents. Since the respondents have submitted that the service record has been sent to the appropriate department for settlement of pension and other retiral dues, we dispose of this O.A. with a direction upon the authorities to accord a personal hearing to the applicant, to find out whether he is in receipt of pension less than what he deserves and issue appropriate reasoned and speaking order within 3 months. In the event the applicant is found entitled to enhanced pension, let the





same be released immediately with arrears and interest in accordance with law, within the said period.

12. Accordingly we dispose of the present O.A. No costs.



**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

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