

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH.

Original Application No. 23 of 2014

Application under section 19 of the Administrative Tribunal Act

Umamaheswar Rao Nimmala son of  
Late N. Venkata Rao residing at Block  
No. L/L-3, Unit -2, Mathura Kati,  
South Eastern Railway, Kharagpur,  
District - Paschim Medinipore, Pin -  
721 304.

Applicants.

- Versus -

1. Union of India service through the  
General Manager, South Eastern  
Railway, Garden Reach, Kolkata - 700  
047,
2. Senior Divisional Personnel Officer  
/Disciplinary Authority, South Eastern  
Railway, Kharagpur, District - Paschim  
Medinipore, Pin - 721 301.

3. Additional Divisional Railway  
Manager/Appellate Authority,  
Divisional Railway Manager's Building,  
Kharagpur, District - Paschim  
Medinipore, Pin - 721 301.

4. Mr. M. S. S. Rao, Inquiry Officer,  
W.P.O. Workshop Personnel Officer,  
South Eastern Railway, Kharagpur,  
District - Paschim Medinipore, Pin -  
721 304.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.350/123/2014

Date of order : 26.5.2014

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

**UMMAMAHESWAR RAO NIMMALA**

**VS.**

**UNION OF INDIA & OTHERS  
(S.E. RAILWAY)**

For the applicant : Mr. A.P. Deb, counsel  
For the respondents : Mr. A.K. Datta, counsel

**ORDER**

**Bidisha Banerjee, Judicial Member**

Aggrieved with a penalty of compulsory retirement with 2/3<sup>rd</sup> cut in pension and gratuity reduced to compulsory retirement with full pension, this application has been preferred to seek the following reliefs:-

*"a) To direct the Respondent to reinstate the applicant to his former post and not to treat the period as breaking service as if nothing had happened and to pay all accrued arrears of pay with consequential benefits;*

*b)(i) To quash the impugned order E/Genl/D&A/Numr/Sr.Cl./P.Br. dated 30.04.2013 issued by Appellate Authority and Additional Divisional Railway Manager;*

*(ii) Punishment Notice No..E/Genl./D&A/Numr/Sr. Cl./P. Br. Dated 27.12.2012 issued by Disciplinary Authority and Senior Divisional Personnel Officer, South Eastern Railway Kharagpur;*

*(iii) Charge Sheet No.E/Genl./D&A/Numr/Sr.Cl./P.Br. dated 07.07.2010 issued by Senior Divisional Personnel Officer/Disciplinary Authority, South Eastern Railway, Kharagpur;*

*c) Costs or incidental to and arising out of this application;*

*d) Any other order or orders as your Lordships may deem fit and proper by way of moulding the reliefs."*

2. The gravamen of the indictments against the applicant that form the basis of proceedings and penalty, are as under:-

*"Statement of Article of charge framed against Shri N.U.M. Rao, Sr. Clerk of Sr. D.P.O's Office-Kharagpur, presently posted at MHS/NS/KGP.*

*Shri N.U.M. Rao, Sr. Clerk of Sr. D.P.O's Office-Kharagpur, (presently posted at MHS/NS/KGP) while working as such is alleged to have committed an act of gross misconduct in that neither he has handed over his portion (i.e Service-Sheets, pending ONR cases, arrears of 6<sup>th</sup> CPC etc) pertaining to Bill Unit No. ESB/1/15/DMO to the OS/Medical (Bills) Section at the time of his release on 11.03.2010 in consequence of his transfer from Medical (Bills)/Section/Sr.DPO's Office-KGP to MHS/NS/KGP vide Memorandum dtd. 04.03.2010 nor he has handed over his portion till date to Shri Shukumar Chandra, Hd. Clerk/Medical (Bills) Section/Sr. DPO's office-KGP who is presently dealing with the work of Bill Unit No. ESB/1/15/DMO though for such handing over Shri N.U.M. Rao has been verbally advised several times by OS/Medical (Bills) Section & APO(I)/Sr. D.P.O's Office -KGP. Even after issue of letter dtd. 19.05.2010 by APO(I)/KGP to Shri N.U.M.Rao in this regard he has not bothered to do needful on his part. Further he has also failed to keep his assurance in this regard which he has given to APO(I)/KGP on 11.06.10.*



*Non handing over of such portion by Shri N.U. M. Rao not only has created a troublesome situation for the Railway Administration but also it may results in transforming of Normal Retirement cases to ONR cases.*

*The above act of Shri N.U. M. Rao, Sr. Clerk clearly shows his utmost irresponsible & arrogant attitude and intension to play with the Railway Administration at his own will which can not be accepted by the Rly. Administration.*

*Thus by the above cited act Shri N.U. M. Rao, Sr. Clerk has failed to maintain devotion to duty and acted in a manner which is unbecoming of a Railway Servant in contravention of Rule 3.1.(ii) and (iii) of Railway Services (Conduct) Rules-1996 thereby rendering himself liable for disciplinary action is being taken against him in terms of RS(D&A)Rules-1968 as amended from time to time.*

*(Name : M. K Prasad)  
Disciplinary Authority  
&*

*Dated 07.07.2010*

*Designation;- Sr. Divisional Personnel Officer  
S.E. Railway/Kharagpur"*

3. The proceedings including the charge sheet, the penalty order and the appellate order, have been assailed on the following grounds:-

- (i) That the Disciplinary Authority has issued a cryptic order;
- (ii) The Disciplinary Authority has failed to give his own reasoning.;
- (iii) The Disciplinary Authority has failed to appreciate that no cross examination was allowed;
- (iii) Non-supply of documents as requested by the applicant vide letter dated 25.10.2012, vitiates the entire proceedings;
- (iv) No inspection of relied upon documents was allowed, no written defence statement was filed over the issue of non-issue of Railway pass and an arbitrary decision of inflicting minor penalty with stoppage of increment for 3 years with cumulative effect was taken, and in course of such penalty a major penalty has caused double jeopardy which is not sustainable in the eye of law;
- (v) The transfer of the applicant from the administrative control of the Headmistress(Gazetted) Mixed High School, Kharagpur to DRM's building Canteen in the course of major penalty proceedings gives rise to every likelihood of bias arbitrariness;
- (vi) The punishment order dated 27.12.2012 has no nexus with the charges ;
- (vii) The authorities ought to have considered that the charge sheet was issued by an incompetent authority;
- (viii) The Appellate Authority has traversed beyond the charges leveled;
- (ix) The charges ought to have been specific;
- (x) The Appellate Authority has violated the direction of Hon'ble Apex Court in **Narendra Mohan Arya vs. United Insurance Co. Ltd. [(2006) 4 SCC 713.**

4. The Id. counsels were heard and the materials on record were perused.

5. We noted as under:-

- (i) The penalty order reads as extracted hereinbelow:-



I have carefully gone through your representations dt. 25.10.12 and 30.10.12 submitted against the conclusion report dt. 04.10.12 and all other facts and circumstances of the DAR case initiated against you vide major penalty charge Memorandum of even no. dt. 07.07.10.

1. The charge against you is that while you were working as such in Sr. DPO's office, Kharagpur had committed gross mis-conduct in as much as you had neither handed over your portion of dealings i.e. service sheets, pending ONR cases, arrears of 6<sup>th</sup> CPC etc. to the OS/Medical bill section nor you handed over your allotted works to the successor at the time of your release on 11.03.10 in consequence of your transfer from Medical bills section, Sr. DPO's office, Kharagpur to MHS/NS/KGP. Non handing over of such portion by you not only has created a troublesome situation for the Railway Administration but also it might result in transferring normal retirement cases to ONR cases.

2. You had submitted representation dt. 16.07.10 along with the consent of D.C for inspection of RUDs in original at the appointed date and time. Subsequently, Sri M.V.D Satyanarayana, Retd Steno to Sr. DEE/TRD/KGP was nominated as your D.C. Accordingly, a 1<sup>st</sup> class duty pass bearing No.679708, dt. 17.08.10 was issued to Sri Satyanarayana to enable him to attend along with you on 07.09.10 for inspecting of RUDs. But you did not appear on 07.09.10 to inspect documents instead you handed over a representation dt. 04.09.10 of your D.C, wherein the D.C pleaded for non-availability of reservation in time as a result of superscription made on the pass. However, to provide natural justice, fresh dates were fixed to inspect the RUDs on 21.09.10 and 05.10.10 but on both the occasions, you did not turn up. Thereafter, the Disciplinary Authority decided to issue fresh pass to the D.C subject to return of the old unused duty pass. But you reiterated that you had nothing to do in the matter being extraneous. Further, you have stressed to make correspondence with your D.C to collect the pass. However, further chance to inspect the RUDs was given to you on 09.08.11 but you evaded the said date on submission of another representation dt. 08.08.11, as a result, the inquiry could not be started for a considerable period.

3. You were advised to submit your statement of defence against Major penalty charge sheet under a series of office letters but you did not submit the same within the stipulated time even yet. Although, you got ample opportunities, neither you inspected RUDs nor submitted your statement of defence as a result the proceedings were being delayed for his non-cooperative attitude with the Railway Administration. Accordingly, the Inquiry Officer also provided you a series of dates for conducting inquiry but you intentionally evaded the dates on one plea or the other causing inordinate delay. Only you have attended the inquiry on 18.06.12 along with your D.C where you did not co-operate with the I.O and kept yourself mum triggering the responsibility to face the inquiry upon the shoulder of D.C who in turn did not give any straight cut reply referring to some other events which were irrelevant.



4. From the documents on record, it transpires that you have been given maximum opportunity to defend your case. But since the date fixed for inspecting documents (RUDs) i.e on 07.09.10 to the date of last hearing of inquiry on 18.06.12, you did never extend co-operation even a little bit to the Railway Administration. Since very beginning of the case, you are in a mood to dodge with the administration and delay the proceedings. As a matter, you were inflicted with minor penalty of stoppage of increment. Moreover, during inquiry, you along with your D.C behaved with extreme non-cooperating manner that ultimately resulted in adjournment of the said inquiry which is a punishable offence under D&A rules. In the circumstances, the undersigned had found no other way but to finalize the ongoing proceedings on ex-parte basis without further lingering the case of any concrete reasons.

5. From the records of the evidence, it is crystal clear that you are involved in the case. You have nothing to say in your favour. You are in a mood to non-co-operate and dodge with Railway Administration from one reason to other. You are completely indifferent about the responsibility entrusted upon you. You showed extreme casual approach and paid no heed to your superiors. You always tried to take shelter allotting Railways Establishment rules evading dates of inquiry without any rhyme or reason. The prosecution witness have been examined and their statements are sufficient to prove the Article of charges against you. The charges leveled against you are proved beyond any doubt.

6. Keeping in view the gravity of mis-conduct, I find that there is no reason to continue such an arrogant guy in the sake of interest of Railways. Such a fellow like you are not only unwarranted but also detrimental to the Railway Administration.

7. Keeping in view the gravity of mis-conduct I hold that severe punishment is warranted in this case. However, considering all facts and circumstances, I take a lenient view and have decided to impose the punishment of compulsory retirement with 2/3<sup>rd</sup> pension and gratuity otherwise admissible as per extant rules with immediate effect.

8. If you wish to prefer any appeal, you may do so in writing before the next higher authority i.e., ADRM/KGP within 45 days of receipt of this Notice in respectful and polite language.

You are to acknowledge receipt of this Notice.

(C.M. Soren)

Disciplinary Authority

Sr. Divl Personnel Officer  
S.E. Railway Khargapur



From the penalty order enumerated above, we find that the applicant, a Senior Clerk in Sr. D.P.O's office had never raised an objection about the competence of the senior Divisional Personnel Officer to charge sheet him, at any point of time during the course of enquiry. Rather the applicant subjected himself to the authority of the Senior Divisional Personnel Officer as the Disciplinary Authority and to the ADRM as the Appellate Authority etc. He has failed to show that the Senior DPO is not his Appointing Authority or the appropriate Disciplinary Authority, and therefore not competent to initiate proceedings and to conclude it with a penalty order.



It is further discernible that despite ample opportunities neither the applicant inspected the RUDs nor he submitted his statement of defence due to which the proceedings got delayed. The applicant as well as his Defence Counsel failed to turn up on the posted dates and therefore, we find no reason to interfere with the penalty order.

The Appellate Authority's order dated 30.04.2013 does not seem to be issued with non-application of mind. We also note that the applicant has preferred a Revisional Application which has also been disposed of. The competence of DA has been duly discussed.

6. The legal proposition:-

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.”*



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.”*

In **Ranjit Thakur v. Union of India & Others, 1989(1)SLJ 109 (SC)=(1987)4 SCC 611**, the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

*".....It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*

7. Having understood the true import of the decisions supra and the limited scope of interference in disciplinary proceedings, we find no reason to interfere with the orders impugned.

8. However, in the event revisional application dated 25.06.2013 is yet to be disposed of, the same be disposed of by three months from the date of receipt of a copy of this order. No costs.



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

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

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