

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
 OA /050/00349/2016

Date of CAV : 10.02.2020

Date of order : March., 2020

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, MEMBER (J)
 HON'BLE DINESH SHARMA, MEMBER (A)



Umesh Prasad, son of Late Shivdani Prasad Sharma, Deputy Chief Mechanical Engineer, Office of the Chief Works Manager, Carriage Repair Workshop, East Central Railway, Harnaut, District – Nalanda [Bihar].

..... Applicant.

By advocate: Sri M.P.Dixit.

Verses

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Member [Mechanical] Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The Joint Secretary [Establishment], Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
4. The Under Secretary [S.I.], Union Public Service Commission, Shahjahan Road, Dhaulpur House, New Delhi.
5. The General Manager, East Central Railway, Hajipur, PO – Dighi Kala, District – Vaishali [Bihar].

. Respondents.

By advocate: Sri S.K.Ravi

O R D E R

JAYESH V. BHAIKAVIA, MEMBER [J]-The applicant has filed the instant

OA seeking the following reliefs : -

“8[i] That your Lordships may graciously be pleased to quash and set aside the impugned order of punishment dated 13.06.2013 passed by Respondent No.3 as contained in Annexure-A/8 together with order of the Appellate Authority dated 09/14.12.2015 as contained in Annexure-A/12 together with Inquiry Report dated 26.12.2011 as contained in Annexure-A/5.

8[2] That your Lordships may graciously be pleased to direct/command the Respondents to restore the pay of the applicant with all consequential benefits including arrears of pay and interest thereon.

8[3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant with all consequential benefits

2. The brief facts of the applicant's case is as under :-



[i] The applicant while working as Coaching Depot Officer, Rajendra Nagar Coaching Complex, Patna, received a charge memorandum dated 19.12.2008 [Annexure-A/1] for the following charges :-

“Article – I

While working as CDO/RNCC/ECR he is responsible for approving indents of costly bath fittings at very high rates as compared to market rates. This resulted in purchase at high rates for which he is responsible.

Article – II

Md. Abdul Salam, Head Clerk, RNCC is found to be involved in false budgetary quotations, bills, Challans on behalf of firms on their letter heads. This is possible only with the connivance of CDO/RNCC. Md. Abdul has also confessed during his clarification that he has done all this on verbal advice of Sri Umesh Prasad, CDO/RNCC. There has been complete failure on verbal advice of Sri Umesh Prasad, CDO/RNCC. There has been complete failure in supervisory role of CDO/RNCC to detect such fraud and as such he is responsible.

Article-III

Proper accountalsystem for released materials are not being maintained at RNCC for which Sri Umesh Prasad, CDO who is shed in-charge is responsible.

Article-IV

Sri Umesh Prasad, CDO/RNCC is also involved in generating superfluous demands which are not as per requirement. These are to oblige some firms with motives. This is proved by the fact that

after tender opening 10 tender cases of bath fittings have been dropped by saying that material is not required now. Therefore, CDO/RNCC is responsible.

By the aforesaid acts of omissions and commissions, Sri Umesh Prasad, CDO/RNCC failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway servant, contravening rules 3.1[i][ii] and [iii] of Railway Services [Conduct] Rules, 1966 as amended from time to time.”

[ii] The applicant, in reply to the memorandum dated 19.12.2008, submitted his detail representation dated 28th January, 2009 [Annexure-A/2], requested the General Manager, East Central Railway Hajipur to exonerate from the charges as no omission and commissions has been made in contravention of Rule 3.1[i][ii] and [iii] of Railway Servants [Conduct] Rules, 1966 as amended time to time. The applicant also submitted a written brief of arguments through his defence helper, Shri K.N. Sharma in reply to charge memo dated 19.12.2008.

[iii] The Id. Counsel for the applicant submitted that the respondents appointed an Enquiry Officer, who conducted an enquiry and submitted its report dated 26.11.2011 [Annexure-A/5]. The findings of the enquiry report is extracted below : -

“12.0 Findings -

Based on all the evidences tendered during the Inquiry, and having carefully considered the arguments of the prosecution and the defence and analysed them in the foregoing paras under the heading “Reasons for finding” I conclude that –

- 12.1 Article-I - proved.
- 12.2 Article-II - Not proved
- 12.3 Article-III - Partly proved, Main responsibility of maintaining account of released materials rested with the concerned SSE [C&W].



12.4 Article-IV - Not proved."



[iv] The General Manager did not agree with the findings of the Enquiry Officer for Article-IV on the ground that the demands have been initiated by supervisors working under the control of CO and the same has been approved by him as controlling officer. CO has also expressed urgency for the material and accordingly limited tender was called. Vigilance check was conducted on 03.05.2008 and clarification of MD. Abdul Salam was taken on 21.05.2008. The demands of these items were dropped by the CO on 30.05.2008 as recorded on individual tender case file i.e. just after vigilance check and clarification of Md. Salam. This clearly establishes that materials were not required but demands were generated and when the vigilance investigation was initiated these demands were dropped. Had there been no checks conducted by the vigilance, these items would have been purchased. Therefore, the CO is responsible for generating the superfluous demands. Therefore, the Dy. CPO/Gaz. for General Manager, appointed Shri T.K. Biswas, Retd. AM/Mech/Railway Board was appointed as Enquiry Officer to enquire into the charges levelled against the applicant with a request to file a representation or submission in writing to the Disciplinary Authority [GM/ECR] within 15 days of the receipt of the letter and enquiry report.

The applicant filed a reply to the disagreement note vide Annexure-A/7 dated 28.05.2012. In the enquiry report, ShriTapan Kumar Biswas, held Article of Charge – I as proved, Article of Charge-II and IV as not proved and Article of Charge-III as partly proved against ShriUmesh Prasad, the applicant .



[v] The General Manager, after considering the IO's report agreed with the findings of the Enquiry Report, decided to impose penalty of "reduction of pay by two stages in the time scale" for a period of six months without cumulative effect, vide order dated 17.06.2013 [Annexure-A/8]. The order further stipulates that the CO has a right to prefer an appeal against the punishment order within forty five days of the delivery of the order under Rule 18 r/w Rule 20 & 21 of the Railway Servants [Discipline & Appeal] Rules, 1968.

[vi] The applicant submitted that he is neither signatory nor anywhere concerned with the purchased materials/tender recommendation rather the concerned persons are indentors, ADME [C&W], Senior Divisional Mechanical Engineer [Carriage & Wagon], Senior DMM, Danapur but this fact has not been taken into consideration either by the Enquiry Officer nor by the authority who has passed the charge memorandum or by the authority who has passed the penalty order.

[vii] The applicant, thereafter vide Annexure-A/10 dated 08.08.2013, filed an appeal to the President of India-cum-

Appellate Authority through proper channel. The President, in consultation with the UPSC, has decided to reject the appeal preferred by the applicant, vide letter dated 14.12.2015 [Annexure-A/12]. The Id. Counsel for the applicant submitted that the Appellate Authority has not considered the points raised by the applicant in its real and true sense, which is bad in law and against various judicial pronouncements of Hon'ble High Courts and Hon'ble Supreme Court of India, hence the present OA.



3. The respondents have filed their written statement and contested the case. According to them, while the applicant was working in the capacity of Coaching Depot Officer/Rajendra Nagar Coaching Complex, Patna, he was senior most officer of the Shed. In Danapur Division, only Sr. DME, Danapur was senior to the applicant in official hierarchy who was overall supervisory control over all the affairs of mechanical department of the division including the unit concerned, i.e. Rajendra Nagar Coaching Complex.

4. The respondents submitted that non-stock indents for procurement of items were signed by the applicant being a Coaching Depot Officer/Controlling Officer, Rajendra Nagar Coaching Depot Officer, Rajendra Nagar Coaching Complex, Patna. The respondents further submitted that furnishing correct information in the indents including the rate was the responsibility of the indenter including the controlling officer who signed on non-stock requisition [Demand Sheet-2]. Controlling Officer who is superior to indenting supervisors, decides

about the item to be procured in his depot. The respondents also submitted that once an officer signs on indents as controlling officer, he needs to ensure the correctness of the indents in all respects including rate of the item being indented and in that way the applicant is primarily responsible. The applicant failed to ensure correctness of rates of the indents since very high rates of items were mentioned in the indents and these rates became the basis for acceptance of the offer and item were procured at very high rates resulting into loss of Rs. 2.54 lakh of Railway revenue.



5. The respondents submitted that Railway Board's letter dated 19/24.02.1987 [Annexure-A/3] referred by the applicant is a guideline for local purchase of materials and since the present case of the applicant pertains to local purchase of materials, therefore, the guidelines issued by the Board was kept in view during the course of investigation. The respondents submitted that the applicant has not mentioned any relevant fact and simply narrated the process under which the D&AR case was dealt with. The Disciplinary Authority passed the penalty order after considering all the relevant facts including all the materials and the defence statement filed by the applicant.

6. The respondents vehemently submitted that during the course of enquiry, article of charge no.1 was found to be proved and the article of charge no. III was found to be partly proved, therefore, the Disciplinary Authority as well as Appellate Authority took their decisions considering the relevant facts of the case including the enquiry report.

7. The respondents further pleaded that the Respondent No.3, i.e. the Joint Secretary [Establishment], Railway Board is not the Disciplinary Authority. In fact, the Member Mechanical, Railway Board is the appropriate Disciplinary Authority. However, the Joint Secretary [Estt.], has signed the penalty order on behalf of the Member Mechanical, Railway Board. It is further submitted that as per Rule 26A of the Railway Servants [Discipline & Appeal] Rules, 1968, any of the officers in the Ministry of Railways shall be competent to sign on behalf of the Railway Board or Present. Rule 26[A] of the aforesaid rule is extracted below : -



“26-A. Service of orders, notices etc. on behalf of the Railway Board or President :- Any of the following officers in the Ministry of Railways shall be competent to sign on behalf of the Railway Board or President any notice, process, order, etc. made or issued under these rules: -“

- (i) Secretary, Railway Board/ Joint Secretary/Deputy Secretary.*
- (ii) Executive Director /Director/ Joint Director.”*

Therefore, it is evidently clear that the Joint Secretary [Estt.] has merely conveyed the order of the Disciplinary Authority, i.e. Member Mechanical, Railway Board in compliance with the authorization granted under Rule 26[A] of the Railway Servants [Discipline & Appeal] Rules, 1968, which is explicitly mentioned in para 5 of the penalty order dated 17.06.2013 [Annexure-A/8]. Therefore, it is not correct on the part of the applicant to state that the impugned order of punishment has not been passed by the competent authority.

8. It is further submitted that the General Manager, ECR [Respondent No.5] after considering the report submitted by the Enquiry Officer and on being agreed with findings recorded in respect of

Charges-I and III, and disagreed with the findings for Charge No. IV and holding the same as proved against the applicant , issued memo of disagreement giving cogent reasons for disagreement with respect to the findings of the I.O. relating to the Article of Charge No.IV and served the same along with a copy of the enquiry report to the applicant.

In response to it, the applicant filed his representation. Therefore, due opportunity was granted by the Disciplinary Authority to charged official to defend himself before taking final decision.



9. Thereafter, the General Manager, considering the representation of the applicant and relevant records of the case forwarded the case to the Railway Board as the penalty intended to be imposed by him i.e. suitable major penalty was not within his competence under the provision of the statutory Rules. The Member Technical, Railway Board being an appropriate disciplinary authority after carefully considering all the relevant records including the applicant's representation, decided to impose a major penalty agreeing with the findings of the Enquiry Report, particularly in respect of Article No. IV and imposed a penalty of "reduction by two stages in the time scale for a period of six months without cumulative effect" vide order dated 17.06.2013 [Annexure-A/8]. The respondents submitted that the penalty imposed on the applicant is in accordance with Rule 6 of the Railway Servants [Discipline & Appeal] Rules, 1968. The respondents have followed proper procedure in terms of rules and after due opportunity granted to the applicant and the same was availed by the applicant. Therefore, it is not open for the

applicant to state that there is any violation of principle of natural justice or any procedural lacuna in conducting the disciplinary enquiry against the applicant.

10. Heard Shri M.P.Dixit, Id. Counsel for the applicant and Shri S.K.Ravi, Id. counsel for the respondents and perused the relevant materials available on record.



11. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments: (1). In the case of K.L.Shinde Vs. State of Mysore (1976) 3 SCC 76, the Hon'ble Supreme Court in para 9 observed as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required".

12. Again in the case of B.C.Chaturvedi vs. UOI & Others (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. 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 eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the



inquiry was held by a 4 competent officer or whether rules of natural justice be 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 on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the 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 of 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”.

13. In the case of Union of India and Others Vs. P.Gunasekaran (2015(2) SCC 610), the Hon’ble Supreme Court 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. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary 5 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;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.”*

14. In the present case, it is noticed that the applicant has participated in the disciplinary proceeding initiated against him under Rule 9 of the Railway Servants [Discipline & Appeal] Rules, 1968 and after conclusion of the enquiry , the Enquiry Officer recorded its findings that Article of Charge No.1 is proved, Article of Charge No.II and IV as not proved and Article of Charge No.III is partly proved against the charged official. It is further noticed that the General Manager, East Central Railway after

considering the Enquiry Officer's report agreed with the IO's finding in respect of charges No. I to III but disagreed with the IO in respect of Charge No. IV. A memorandum of disagreement giving brief reasons for the GM's finding in respect of charge no. IV was served along with a copy of the IO's report on charge official, i.e. the applicant herein. In response to it, the CO, had submitted his representation and after considering the case, including the CO's representation, the case was forwarded to the Railway Board Office as the penalty intended to him was not within his competence. The Railway Board as the competent disciplinary authority after considering all the relevant records of the disciplinary case against the applicant has passed the speaking order dated 17.06.2013 and came to the conclusion that for Article of Charge no. I and III is established against the applicant and Article No. II and IV the applicant did not found responsible. Considering the facts the enquiry and the relevant papers, the said competent authority imposed penalty of reduction by two stage in the time scale for a period of six months without cumulative effect. The statutory appeal filed by the applicant has been rejected by the Appellate Authority by considering all the aspect of the case including the submissions of the applicant.



15. In view of the factual matrix, the submission of the applicant that he was not granted due opportunity to defend his case and he was denied the opportunity of personal hearing and there was violation of principle natural justice as also that the impugned order has not been passed by the competent authority is in our considered view is not

tenable. As noticed hereinabove, the charges levelled against the applicant has been partly proved and accordingly, the competent authority after granting fair opportunity to the applicant passed the impugned order. We do not find any infirmity in the decision making **process.**

16. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and in absence of any material to substantiate the submission of applicant including any procedural lapses or violation of principle of natural justice, the OA lacks merit. Accordingly, the OA is dismissed with no order as to costs.



Sd/-

[Dinesh Sharma]/M[A]

Sd/-

[Jayesh V. Bhairavia] /M[J]

mps