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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 2135/98

New Delhi, this the 01st day of September, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Sh. Uggar Sain Joshi, S/O Late Sh.
Kabli Ram Joshi, Retired Assistant
Engineer, Northern Railway, Ferozepur
Division.

R/O House No. S-44, School Block,
Shakarpur, Delhi - 91.

(By Advocate: Sh. S.K. Sawhney)Applicant

Versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Chief Engineer, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.

(By Advocate: Sh. R.P. Aggarwal)Respondents.

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

The applicant, a retired Asstt. Engineer in the Railways has come up with this OA against the order dated 15.12.97 passed by the disciplinary authority imposing 10% cut in his pension for two years, conveyed to the applicant vide Northern Railway's letter dated 5.1.98. He had also filed a review petition against the said punishment order but a response to the same is, according to the applicant, still awaited.

2. The relevant facts of the case are that a little before his retirement on 31.7.93, he was charge-sheeted for having measured, test checked and made excess payments to the contractor for substandard ballast

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in connivance with and with a view to extending undue benefit to the contractor, and for having shown in records the measurement of 822 stacks in just four days which was practically not possible and further for allowing the contractor to put the ballast into the track in a bid to destroy evidence.

3. We have heard the learned counsel for the parties and have perused the material on record.

4. It is seen that the departmental proceedings undertaken against the applicant were allowed to follow the prescribed course giving reasonable opportunity to the applicant to state his case. The applicant's contention that he was not allowed to produce some of the defence witnesses and was also not allowed to inspect a few documents, does not lend strength to his defence case inasmuch as the findings of the Enquiry Officer based on incontrovertible record and evidence do clearly establish at least two of the charges levelled against the applicant, one of which is the principal charge. The third charge relating to putting of the ballast into the track with a view to destroying evidence, was not found to have been conclusively proved against him.

5. We have, after a perusal of the available record and the oral arguments of the learned counsel, satisfied ourselves that no prejudice has been caused to the applicant due to disallowance of some defence witnesses and inspection of certain documents. In taking this view, we have borne in mind the observation of

Hon'ble Supreme Court in Bank of India & Anr. Vs.
Degala Suryanarayana, JT 1999 (4) SC 489 which is
reproduced below for the sake of convenience:-

"10.12 Held: Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

The finding recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court. The learned Single Judge as well as the Division Bench of the High Court were not right in setting aside the finding of the Disciplinary Authority and restoring that of the Enquiry Officer. The High Court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding."

6. We are additionally fortified in our view as
above in the light of the Hon'ble Supreme Court's

observations in S.K.Singh Vs. Central Bank of India & Ors. 1996 (6) SCC 415 which is read as follows:-

"3. The only controversy raised in the High Court was that as he was not supplied with the copy of the enquiry report, the order of dismissal was bad in law. The learned Single Judge as well as the Division Bench of the High Court have considered the effect of the judgment of the Constitution Bench of this Court in Managing Director, ECIL Vs. B. Karunakar (1993) 4 SCC 727. The learned Single Judge as well as the Division Bench of the High Court had asked the petitioner as to what prejudice the petitioner had suffered for non-supply thereof. Since there was no adequate explanation offered by the petitioner, the High Court came to the conclusion that though the copy of the report was not supplied, on the facts, as no prejudice was proved, it was not a case warranting interference.

4. It is contended by Shri Khanduja, learned counsel for the petitioner, that since this Court has laid down the law that supply of copy of the enquiry report is a precondition for a competent officer to take disciplinary action, the appropriate course would have been to send back the case to the disciplinary authority. For this course, normally there is no quarrel, as the Court had settled the law that a copy of the report needs to be supplied to the delinquent employee to enable him to make representation against the proposed action or punishment and, thereafter, the authority is required to consider that explanation offered by the petitioner and then to take decision on the quantum of punishment. In this case, though copy of the report was not supplied, he was asked by the learned Single Judge as well as by the Division Bench as to what prejudice he suffered on account of non-supply of the report; but he was not able to satisfy the learned Judges as to the prejudice caused to him on account of non-supply of the enquiry report. On the facts, we find that there is no illegality in the decision taken by the High Court."

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7. We also find that the entire material pertaining to the enquiry against the applicant has been examined in detail by the UPSC and the Commission has also agreed with the findings of the E.O., and a copy of the UPSC's letter was duly supplied to the applicant. We notice that the review petition filed by the applicant has also been decided and the punishment order has been upheld. ^{also} We notice that the order dated 20.2.98 passed in the review petition filed by the applicant, is also a speaking order.

8. We have not found any evidence of perversity or malafide through out the course of the departmental proceedings nor are we prepared to accept any malafide on the part of the disciplinary authority or the President who decided the review petition.

9. In the result, the OA fails and is accordingly dismissed. There shall be no order as to costs.

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(S.A.T.Rizvi)
Member (A)

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Kuldeep
(Kuldeep Singh)
Member (J)