

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.48/2018

Dated this the 30th day of September, 2020

Date of Reserve: 24.08.2020

Date of Order: 30.09.2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr.A.K.Dubey, Member (A)

Mr. Bhursingh Manji,
Son of Mr.Manji Urtan,
Age about 47 years ,
Nr.Katchachut Via Dandi Road,
Nr.Saket Ashram,
Village Okheswar,
Post - Ambetha,
Surat – 399 651.

Applicant

(By Advocate Mr.P.H.Pathak)

Vs.

1. The Union of India,
Notice to be served through
The General Manager, W.Rly.,
Churchgate, Mumbai – 400 020.
2. Sr.D.E.N. (S) W.Rly.,
Divisional Office, Batanagar,
Vadodara – 390 004.

3. Asst. E.N. (S) South,
W.Rly., Near Railway Station,
Bharuch 394 001.

Respondents

(By Advocate Mr.M.J.Patel)

O R D E R

Per:Jayesh V.Bhairavia, Member (J)

1. The instant Original Application is the fourth round of litigation instituted by the applicant being aggrieved and dissatisfied by the speaking order dated 16.2.2016 passed by Appellate Authority (Annexure A/1) whereby the punishment awarded against the applicant by the Disciplinary Authority has been upheld. Hence, the present O.A.

2. The following prayers are made in the present O.A.,

8 “(A) *The Hon’ble Tribunal be pleased to declare the impugned order of the Appellate Authority rejecting the appeal of the applicant as unjust, arbitrary, illegal and violative of Art.14 and 16 of the Constitution of India and be pleased to set aside the same.*

(B) *The Hon’ble Tribunal be pleased to declare that the Disciplinary and Appellate authorities have travelled beyond the scope of the charges and therefore, be pleased to quash and set aside the order of imposing of the penalty and the order passed by the Appellate Authority and direct the respondents to reinstate the applicant in service with all consequential benefits and*

further direct to pay arrears of salary to the applicant with 18% interest.

(C) Be pleased to direct respondents to recover the amount of interest, special cost and compensation from the erring officer.”

3. The facts in the background, which compelled the applicant to approach this Tribunal thrice in past and once again in this fourth round of litigation, are that disciplinary proceedings under Rule 9 of Railway Servants (Discipline and Appeal) Rules 1968 were initiated against him while the applicant was working as Gangman. He was served with the major penalty chargesheet dated 29.01.1999 (Annexure A) for the charge of misbehaviour and indiscipline. The imputation against the applicant was that he assaulted railway man on duty and disobeyed the instructions of the superiors.

3.1 Applicant had participated in the Departmental enquiry. During the enquiry, the applicant took the assistance of one Shri J.V.Fitter to defend his case. After conclusion of the enquiry, the enquiry officer submitted his report dated 30.09.2004 holding that charges levelled against the applicant have been proved.

3.2 The disciplinary authority (in short DA) vide its order dated 22.01.2005, (Annexure A/1) recorded its finding that the applicant Shri Bhursingh Manji has been found guilty of assaulting railway man on duty

and disobeying the instructions of the superiors. It is further observed by the DA that as per the statement of Shri O.P.Bhardwaj, SE (P.Way)KBCS, the applicant was habitual in quarrelling with co-workers and damaging the discipline in the unit. Based on the said findings, the DA awarded major penalty of removal from service with immediate effect along with the cut of 2/3rd pensionary and gratuity benefit.

3.3 Aggrieved by the aforesaid punishment order, the applicant preferred statutory appeal before the Appellate Authority (in short AA) and the said appeal was dismissed vide order dated 14.3.2006 and the Appellate Authority upheld the decision of the Disciplinary Authority. Therefore, the applicant in his first round of litigation approached the Tribunal by preferring O.A. No.116/2007. The grounds urged in the OA *inter alia* were that the Appellate Authority's Order were not reasoned one and that the AA failed to deal with the contentions raised by the applicant in the appeal. This Tribunal vide order dated 07.11.2008 quashed and set aside the order passed by the Appellate Authority and remitted the matter back to the authorities concerned for taking a decision afresh on the appeal of the applicant within a period of two

months keeping in mind the law laid down by the Hon'ble Apex Court in *Ram Chander vs. Union Of India & Ors* [AIR 1986 SC 1173].

3.4 Pursuant to the directions passed by this Tribunal in the aforementioned OA No. 116 of 2017, the Appellate Authority again vide its order dated 29.04.2009 dismissed the appeal. Being not satisfied with that, the applicant again approached this Tribunal by filling O.A. No.419/2010 challenging the order dated 29.4.2009. This Tribunal vide order dated 24.03.2011 (Annexure A/4), quashed and set aside the order passed by the Appellate Authority dated 29.4.2009 and directed the AA to consider the appeal of the applicant after taking into consideration the contentions raised in the appeal by the applicant. The applicant filed Review Application being R.A. No.30/2011 in O.A. No.419/2010. The Review Application came to be rejected by this Tribunal vide its order dated 18.09.2011 (Annexure A/5).

3.5 In the meanwhile, vide order dated 01.06.2011, the Appellate Authority once again dismissed the appeal of the applicant in the wake of complying with the directions issued by the Tribunal on OA No. 419 of 2010. Yet, not being satisfied with the order passed by the AA, the applicant came in the third round of litigation before the Tribunal filed

O.A. No.25/2012. Again, this Tribunal found that the AA had not given cogent reason for dismissing the appeal of the applicant and accordingly, the said O.A. came to be disposed of by this Tribunal by order dated 11.12.2015 (Annexure A/6) with the directions as contained in para 18(i) to (viii), which read as under:-

- “18(i) The competent authority shall give a personal hearing to the applicant and also to his defence assistant, if any, availed of him in terms of sub-rule (13) of Rule 9 The Railway Servants (D&A) Rules 1968.*
- (ii) Annexure A/2 appeal shall be dealt with by the competent authority giving a well-reasoned order dealing with each of the contentions raised in the paragraph Nos. 1 to 13 in Annexure A/2 appeal and a specific finding on each of such paragraphs.*
- (iii) While passing the aforesaid order, the competent authority shall examine whether the procedure laid down in the Railway Servants (D&A) Rules, 1968 has been complied with and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or failure of justice.*
- (iv) The competent authority shall also examine whether the findings of the Disciplinary Authority are warranted by the evidence on record in the DE file.*
- (v) The competent authority shall further examine whether the penalty imposed by the disciplinary Authority is proportionate to the charges levelled against the delinquent employee.*
- (vi) The competent authority, while passing the final order on Annexure A/2 appeal may confirm/ reduce or set aside the penalty imposed in terms of the Railway Servants (D & A) Rules, 1968 or remit the case to the Disciplinary Authority or to any other authority with such direction as it may deem fit in the circumstances of the case.*

- (vii) *The Appellate Authority shall give justification with a special emphasis on the proportionality of the punishment awarded by the Disciplinary Authority vis-à-vis the nature of the charges levelled against the delinquent.*
- (viii) *While passing order on the appeal, the competent authority shall also keep in view the fact that the de facto complainant of the incident alleged in the charge sheet is no longer alive and that the applicant has lost the opportunity of cross-examining him, in the event, the competent authority deems it necessary to order a further inquiry in terms of Rule 10 read with Rule 22(2) the Railway Servants (D&A) Rules, 1968.”*

3.6. In compliance of the directions passed in O.A. No. 25 of 2012, the Appellate Authority passed the impugned speaking order dated 16.02.2016 (Annexure-A Colly.) and rejected the appeal of the applicant by holding the punishment awarded by the Disciplinary Authority. It is this speaking order which has been brought under challenge by way of filing of the present Original Application.

4. Learned counsel for the applicant Mr.P.H.Pathak seeking to challenge the order impugned in the present OA, made the following submissions,

- (i) The present case is a clear case of malafide exercise of power by the authorities,*
- (ii) Vague charges are levelled against the applicant.*
- (iii) The chargesheet issued is defective on many counts, mainly that no specific details are mentioned in the chargesheet and that no documents and names of the witnesses were reflected in the chargesheet.*

(iv) There is delay in conducting the enquiry.

(v) Rules for conducting the departmental enquiry were not followed.

(vi) During inquiry, opportunity of cross-examination was not afforded to the applicant.

(vii) There was no charge against the applicant of habitual offender.

(viii) No cogent reasons are mentioned by the DA as well as by the AA in arriving at their respective conclusion holding the applicant to be guilty of charges,

(ix) The penalty imposed on the applicant is based on conjectures and surmises only and the decision of imposing penalty is not backed by the cogent reasons.

(x) The AA failed to consider the quantum of the punishment looking to the gravity of charges and erroneously upheld the harsh punishment awarded by the DA.

Finally, it is contended by the counsel for the applicant that the AA failed to consider and follow the spirit of the directions issued by this Tribunal in its order dated 11.12.2015 passed in OA No. 25 of 2012 and erroneously passed the impugned order. Further the learned counsel Mr.P.H.Pathak placed reliance on (i) State of Punjab vs. V.K.Khanna reported in [AIR 2001 SC 343], (ii) State of Uttaranchal vs. Kharak Singh reported in [2008 (8) SCC 236], (iii) Mohammad Ramzan Khan reported in [AIR 1991 SC 491] and State of Mysore vs. ManoheGauda reported in [AIR 1966 SC 506] and in the case of Indu Bhushan Dwivedi reported in [(2010) 11 SCC 278] and submitted that without there being any

evidence against the applicant, the impugned order has been passed which is bad in law.

4. Defending the case of the applicant, the respondents have filed their reply and denied the contentions raised by the applicant. It is submitted by learned counsel Mr.M.J.Patel that the documents of DAR case have been supplied to the applicant on 27.04.2002 and the acknowledgement for the same has been obtained vide Annexure R/1. Therefore, it is factually not correct that the applicant was not supplied with the relevant documents. The fact finding report submitted by the EO Shri O.P. Bhardwaj confirmed that *Shri Bhursingh Manji is habitual in quarrelling with co-workers and damaging the discipline in unit.* The applicant was also found habitual for remaining unauthorised absence from the unit. It is submitted that enquiry proceedings were conducted as per Rules. Sufficient opportunities were given to the applicant. It is denied that the respondents have breached the principles of natural justice. The charges levelled against the applicant about assaulting railway man on duty and disobeying the instruction of superiors were established and the same were proved during the enquiry. Accordingly, the Disciplinary Authority awarded the punishment for "Removal from

Service immediate effect along with 2/3rd of pensionary and gratuity benefit". There was no discrepancies or infirmities in decision making process. It is also contended that after service of chargesheet the respondents have received letter dated 07.08.2002 issued by the SSE(PW)KBCS whereby it was informed that again on 08.04.2000, the applicant had quarrelled with his colleague gangman Shri Ramesh Moti, he had beaten and run away leaving his duty and remained absent unauthorizedly from 09.04.2000 to 23.02.2001 (Annexure R/3). The applicant is habitual for remaining unauthorized absence from duty and also making quarrels with their co-workers and disturbing the atmosphere of the administration. The necessary steps were taken in accordance with the D&A Rules against the applicant.

6. It is submitted that in due compliance of the direction issued by this Tribunal passed in OA No. 25 of 2012, the Appellate Authority has passed a reasoned and speaking order. The Appellate Authority after considering the material available on record, upheld the order passed by the Disciplinary Authority by citing the cogent reasons. Therefore, it is not correct on the part of the applicant to state that the Appellate Authority passed the impugned order in mechanical manner. The AA

had assigned detailed reason for its conclusion. Therefore, prayers sought by the applicant in this O.A. are prayed to be rejected.

7. Rejoinder has been filed by the applicant reiterating all the contentions raised in the OA, additionally it is submitted that so far allegation about habitual for remaining unauthorised absent is not the charge levelled against the applicant. In spite of it, both the authorities relied upon the statement of one Mr.Bhardwaj in this regard and based on it, awarded major penalty, which is not permissible.

8. Respective learned advocates for the parties have been heard and the materials available on record have been duly perused.

9. The present Original Application is the fourth round of litigation instituted by the applicant for the same cause. The detailed discussion of the earlier round of litigations is made hereinabove. At this stage, it is also apt to refer the directions contained in para-19 of OA No. 25 of 2012, which read as under:-

“We direct the respondents to punctiliously obey the above directions and to pass appropriate order on Annexure A/2 appeal within two months from the date of receipt of copy of this order, failing which respondent No.1 General Manager himself shall appear before this Tribunal and shall explain why the aforesaid directions have not been complied with....”

10. We have carefully gone through the impugned speaking order dated 16.2.2016/17.2.2016 (Annexure A) which has been passed by the AA pursuant to the directions dated 11.12.2015 passed in OA No. 25 of 2012 by this Tribunal.

11. A perusal of the impugned order clearly reveals that though ample opportunities for personal hearing were given to the applicant/delinquent by the Appellate Authority, he chose not to appear. The documents mentioned in the charge sheet had been supplied to the applicant vide letter dated 29.3.2005. The Enquiry Officer had allowed the applicant delinquent to take assistance of DC and accordingly, he took the assistance of Shri J V Fitter – Office Supdt, (Traffic Store) to defend his case. It is also stated by the AA that charges were proved with the assistance of statement made by Shri Babu Bhika Khera Jokhna & Bhika Amtha, that the applicant was throwing stones and beating the Jamadar with beater. Further, while dealing with contention of the applicant CO that he was not given a chance to cross examine Shri O.P.Bhardwaj, in this regard the AA recorded its finding that the said grievance of the applicant is not correct. This is an after thought as the CO has himself certified that, he is satisfied with the proceedings. It is

further stated by the AA that the facts included in the letter of Shri O P Bharadwaj, the same was supported by the statements of the witnesses recorded during the departmental inquiry process.

12. It is further noticed that in para 12 of the impugned order, the AA has recorded its findings and reasons to uphold the penalty and its proportionality, to record as under,

“.....The post of Gangmen in the Railway Department are of very important and they are required to work in the track under the supervision of their supervisors. Such action of throwing stones and beating the supervisor by beater as per the charges levelled against CO, is unwarranted and will lead to indiscipline on the part of the CO. Such incidents could have lead to affect safe running of trains having thousands of passengers. At the time of incident, the Gang was doing a very important work of lifting and surfacing of track. This is a very important work to maintain safety of running trains. Any lacunae in this work can lead to derailment of trains. Hence, the penalty imposed by the DA is proportionate to the charges levelled against the delinquent employee.”

13. The above discussion and reproduction of facts hereinabove, makes it abundantly clear as day light that while passing the impugned order as per the provision of Rule 22 (2) of Railway Servants D&A Rules 1968, the Appellate Authority has duly complied with the directions contained in para 18 (i) to (vii) of the Order dtd. 11.12.2015 issued by this Tribunal in OA No. 25 of 2012. It is noticed that the AA has

assigned sufficient and cogent reasons for arriving at the conclusion reflected in the impugned order, including the point of proportionality of the penalty. It is apt to mention that the power of the Tribunals in reviewing the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority, are very limited and such powers are exercised only in such cases where flagrant violation of rules and breach of principles of natural justice is established.

14. A bare perusal of the speaking order which is impugned herein, it reveals that due opportunity was granted to the applicant to defend his case during the inquiry. After considering the majority of points raised in appeal, the AA has recorded its finding by cogent reasons for its approval to the decision of disciplinary authority for awarding major punishment to the applicant. Therefore, the submission of the applicant that Appellate Authority had not considered the points raised by the applicant and passed the order in mechanical manner. It is also not correct to state on behalf of the applicant that there was no evidence surfaced during the enquiry against the applicant. As noticed herein above, the AA has assigned detailed reason for its finding and

conclusion. The Hon'ble Apex Court in the case of **State of Bihar vs. Phulpari Kumari** reported in [2020 (2) SCC 130], has held that

“it is settled law that interference with the orders passed pursuant to a departmental enquiry can be only in case of “no evidence”. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the Criminal Court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.”

15. In addition to the above discussion, even the settled proposition of law on the subject does not favour the case of the applicant. The Hon'ble Apex Court in the case of *State of Karnataka vs N.Gangaraj* reported in [(2020) 3 SCC 423], after referring to the earlier decisions of the Hon'ble Supreme Court, viz. *State of A.P. &Ors. Vs. Sree Rama Rao* [AIR 1963 SC 1723], *B.C.Chaturvedi vs. UOI & Ors.* reported in [(1995) 6 SCC 749], *High Court of Judicature at Bombay through its Registrar vs. Sashikant S. Patil & Anr.* [(2000)1 SCC 416], *UOI vs. P. Gunasekaran* [(2015) 2 SCC 610] & others, re-iterated the scope of judicial review of the decision of disciplinary authority and held that *“the Disciplinary Authority aggrieved with the findings of the Enquiry Officer and had passed an order of punishment. An appeal before the State*

Government was also dismissed. Once the evidence has been accepted by the Departmental Authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of the facts recorded by re-appreciating evidence as if the courts are the Appellate Authority.”

16. In the present case, as noted hereinabove, the disciplinary authority and the appellate authority recorded its finding that charges levelled against the applicant have been proved and considering the gravity of misconduct of the applicant delinquent awarded the punishment. Once both the authorities had recorded their findings with cogent reasons, we do not find any merit to interfere with the findings recorded by the Appellate Authority.

We are in respectful agreement with the proposition of law laid down by the Hon'ble Apex Court in the judgments, which are relied upon by the counsel for the applicant here. However, in the facts and peculiar circumstances of the present case, same are not helpful to the applicant.

17. In view of the above discussion and in light of the settled legal position of law discussed hereinabove, we do not find any merit in the

present Original Application. Hence, it is dismissed. There shall be no order as to costs.

(Dr.A.K.Dubey)
Administrative Member

(Jayesh.V.Bhairavia)
Judicial Member

SKV