CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00460/2020

HYDERABAD, this the 20th day of January, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

B. Prasada Rao
S/o B. Chinnodu, Group. 'B',
Aged 46 years, working as Senior
Section Engineer, O/o. Diesel Loco Shed,
East Coast Railway, Visakhapatnam.

...Applicant

(By Advocate : Mrs. N. Anula)

Vs.

Union of India rep by its,

1.The Chief Mechanical Engineer &
Revisionary Authority, East Coast Railway,
Bhubaneswar, Orissa.

2. The Asst. Divisional Railway Manager,
(ADRM), East Coast Railway, Waltair,
Vishakhapatnam.

3.The Senior Divisional Mechanical Engineer
(D), East Coast Railway, Vishakhapatnam. ....Respondents

(By Advocate : Mr. S.M. Patnaik, SC for Rlys)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the penalty imposed by the disciplinary authority vide impugned order dated 25.10.2018, which was modified by the appellate authority and confirmed by the revisionary authority

3. Brief facts of the case are that the applicant while working as Sr. Section Engineer, was issued a charge memo dated 25.6.2015 for variation in the stock of High Speed Diesel oil and imposed the penalty of reduction to the post of Junior Engineer permanently on 23.4.2016 and the appeal as well as the revision petition preferred were rejected on 20.7.2016 and 6.3.2017 respectively. Challenging the penalty, OA 950/2017 was filed, wherein the penalty imposed was set aside and the respondents were directed to impose lesser punishment as was imposed on Sri N.G. Naidu for identical charges. Respondents filed WP 29579/2018 and the Hon'ble High Court set aside the order of the Tribunal as well as the penalty and remitted the matter to the disciplinary authority. Subsequently, the disciplinary authority reviewed and modified the penalty imposed on the applicant to that of reduction to the post of JE for 5 years with postponement of increments along with loss of seniority, vide order dt. 25.10.2018. On appeal, it was reduced to reduction to the post of JE for 3 years with no effect on the postponement of increments, vide order dt. 31.01.2019 and without loss of seniority. Revision petition filed against the order of the appellate authority was rejected on 06.01.2020 and therefore, the OA.

4. The contentions of the applicant are that for identical charges Sri N.G Naidu,OS was imposed a lesser penalty and therefore, he was discriminated. Principles of Natural Justice were not followed. The order of the Hon'ble High Court was not properly implemented. The penalty imposed is arbitrary and unjust.

5. Respondents, *per contra*, state that the applicant, while working as in-charge of the Railway Consumer depot was found maintaining excess stock of HSD to the extent of 9215 litres on 27.3.2015 with a malafide intention. Accordingly charge sheet was issued imposing the penalty of reduction to the post of JE permanently with loss of increments and seniority, which was finally modified after being legally contested in the Tribunal and the Hon'ble High Court to that of reduction to the post of JE for 3 years without postponement of increment and loss of seniority. The nature of duties of the applicant and that of Sri N.G.Naidu are different and hence the difference in the penalty. The currency of the penalty was over on 23.4.2019 and the original status of the applicant as Senior Section Engineer plus pay of the applicant were restored in all respects.

6. Heard both the counsel and perused the pleadings on record.

7. I. This is second round of litigation. The dispute is about the penalty imposed on the applicant, for having maintained excess stock of HSD oil, being severe when compared with the one imposed on Sri N.G.Naidu, OS for the identical lapse. Respondents maintain that the applicant as in-charge of the consumer depot has maintained excess stock with a malafide intention and that his nature of duties being different with that of N.G. Naidu, OS, a different penalty was imposed.

II. Initially, on noticing the excess of HSD oil during stock verification on 27.3.2015, disciplinary proceedings were initiated and the applicant was imposed with the following penalty on 23.04.2016:

> *"Reduction permanently to the post of JE (D)/ M in PB-2 with GP Rs.4200. The applicant is unfit for future promotions. The pay as JE (D) M in PB 2 with GP Rs.4200 may be fixed at the minimum i.e. Rs.9300+GP".*

Against the said penalty, the applicant preferred an appeal to the 2nd respondent on 02.06.2016, which was rejected by the appellate authority on 20.07.2016. Further, the applicant submitted Revision before the 1st respondent, who passed order dt. 06.03.2017 confirming the orders passed by the appellate authority.

III. The same when challenged in OA 950/2017, the directions of the Tribunal vide order dt. 20.04.2018 were as under:

> *"10. When two employees face similar charge, which was proved against them in the course of enquiry, there should not be any disparity in the punishment imposed by the disciplinary authority against them.*
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> *11. In the instant case, the disciplinary authority imposed comparatively a very severe punishment against the applicant while imposing a lesser punishment against N.G. Naidu. Such a disparity in punishment in respect of a similar charge is not permissible in law. The punishment imposed on the applicant is not only shockingly disproportionate, but also illegal when compared to the punishment inflicted on the N.G. Naidu who faced similar charge. The punishment which is unsustainable in law is required to be set aside in the present OA. Consequently, the punishment imposed by the disciplinary authority, confirmed by the appellate authority and the revisionary authority is set aside. Matter is remitted back to the respondents to impose a penalty, which is identical to that of N.G. Naidu, against the applicant.*
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> *12. In the result, the OA is partly allowed without any order as to costs."*

When the Tribunal order was challenged in WP No.29579/2018, Hon'ble High Court on 27.8.2018 has observed as under:

> *"Perusal of the major penalties prescribed under the aforestated Clauses demonstrates that the authorities exceeded their brief in disqualifying the respondent-applicant from aspiring for further promotions for all times to come.*
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> *That apart, perusal of the record reflects that the respondent-applicant was not directly involved in the alleged irregularities in relation to the stock of HSD oil. At best, he could be held guilty of dereliction of duty in terms of supervising his subordinates in the stock verification and maintenance of records as per norms.*
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> *That being so, the penalty of permanent reduction to a lower post appears to be shockingly disproportionate to his short-comings in relation to the charge. Be it noted that Clause (vi) of Rule 6 of the Rules of 1968 also permits conditions for restoration to the original grade, post or service to be prescribed while effecting reduction to a lower grade, post or service. It appears that this aspect of the matter was completely overlooked and the highest punishment of permanent reduction was straight away visited upon the respondent-applicant. Be it viewed from any angle, we are of the opinion that the authorities failed to exercise their discretion judiciously while taking a decision as to the nature and extent of the penalty to be imposed upon the respondent-applicant. Unfortunately, the Tribunal completely lost sight of this aspect of the matter and decided the matter on wholly unsustainable grounds.*
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> *It may be noted that in terms of the law laid down by the Supreme Court in STATE OF MEGHALAYA V/s. MECKEN SINGH N.MARAK, AIR 2008 SC 2862, this Court, while setting aside the punishment on the ground of proportionality, is required to remit the matter to the disciplinary authority to reconsider the question of imposition of penalty.*
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> *The writ petition is accordingly disposed of setting aside the order dated 20.04.2018 passed by the Tribunal in O.A.No.020/00950/2017 and also setting aside the punishment order dated 23.04.2016 issued by the Senior Divisional Mechanical Engineer (Diesel), East Coast Railway, Visakhapatnam. The matter is remitted to the Senior Divisional Mechanical Engineer (Diesel), East Coast Railway, Visakhapatnam, for consideration afresh of the issue in the light of the rules and the observations made hereinabove.*
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> *Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs."*

Thereafter, in compliance with the directions of the Hon'ble High Court, Disciplinary authority reviewed the penalty and modified it as under, on 25.10.2018:

> *"Reduction from the post of SSE (D)/M/VSKP in Level-7 to the lower post of JE(D) in Level-6 for a period of 5 years with the pay of Rs.35,400/-, on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay with loss of seniority".*
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> *NB: The above punishment may be effected from the date of earlier punishment".*

On appeal it was further reduced by the appellate authority vide order dt. 31.10.2019, as under:

> *"Reduction from the post of SSE in Level-7 to the lower post of JE in Level-6 for a period of 03 years with the pay of Rs.35,400/-, on the expiry of such period, the reduction will not have the effect of postponing the future increments of his pay & without loss of seniority".*
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> *NB: The above punishment may be effected from the date of earlier punishment"*

Upon revision, the revisionary authority vide its order dt. 06.01.2020, upheld the penalty imposed by the appellate authority.

IV. The bone of contention is that Sri N.G. Naidu, OS who faced similar charges was imposed the penalty of withholding of annual increment for a period of 2 years whereas the applicant with the penalty of the reduction to the post of JE for 3 years, which is severe. Respondents justify the penalty by claiming the difference in the nature of duties. In this regard, the observations of the Hon'ble High Court are vital. It was observed that the respondents have not used their discretion in imposing a justifiable penalty upon the applicant. In the instant case, the issue is about maintenance of excess stock. Respondents state that the Sri N.G. Naidu, OS

maintains the records. While maintaining the records, it could be discerned from the general perspective of inflow and outflow of diesel as to whether the stock of HSD is properly maintained by taking proper readings. The OS too is accountable and responsible to point out any variation in the stock and in particular when the variation is as huge as 9215 litres. Therefore, in imposing a penalty, it is essentially the role of the employees in the misdemeanor committed which comes into play and not the post and the nature of duties one discharges. Respondents tried to differentiate the penalty based on the nature of duties discharged but the question of importance is what is the contribution of both the employees in question in regard to maintaining of excess stock of HSD oil. Maintenance of records would not mean only posting of figures given, but also to ensure that the figures posted in the records are correct and justifiable. When there is an excess stock of 9215 litres, it cannot be said that the OS, Sri N.G. Naidu, would not be aware of the same since analysis of the figures would easily bring out the mischief played by the applicant. *De facto*, as per records on file there is no report submitted by the OS to the superior authorities about the huge variation. Had he done so, then the case would have been different and since the OS did not do so, he is equally responsible for the maintenance of excess stock. Therefore, there appears to be collaboration in the misconduct and hence, both were rightly penalised but the respondents but while deciding the quantum of the penalty, the mistake of treating of equals as unequals was committed, which is impermissible under Law. When the responsibility is equal the penalty need to be more or less similar. In imposing the penalty, the doctrine of equality would come into play. If the co-delinquent is imposed with a particular penalty then the same has to

be imposed on the delinquent too, for identical charges. Here the charge of maintenance of excess stock of HSD oil is one and the same. Therefore, there has to be parity even in imposing the penalty as observed by Hon'ble Supreme Court of India in **Naresh Chandra Bhardwaj vs Bank Of India on 22 April, 2019** Civil Appeal No. 4037 of 2019 [Arising out of SLP(C) No.16555 of 2018] as under:

> *"7. There is really no difference in the proposition, which is sought to be propounded except that in the latter judgment the principles have been succinctly summarized in the last paragraph of the judgment, which read as under:*
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> > *"19. Xxxx*
> >
> > *19.5. The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co- delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable." (emphasis supplied)*
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> *8. The principle, thus, culled out is that remitting a matter on the issue of quantum of punishment would be as set out in para 19.5 aforesaid, i.e., where a co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This is based on the principle of equality but then there has to be an absolute parity."*

As far as the charge of maintenance of excess stock is concerned, it is one and the same in respect of the applicant and the Sri N.G.Naidu and there is no denial of the same in the reply statement. Hence for an identical charge imposing a different penalty which is relatively severe in magnitude upon the applicant, goes against the law laid in the above verdict. Hence the decision of the respondents to this extent would not hold ground.

V. Further, the facts make it obvious that the applicant has not been treated equally in the context of Article 14 of the constitution, which covers the entire realm of respondents action. Article 14 is applicable not only when the applicant is discriminated in the exercise of his right but also when it comes to imposing a penalty upon him. Equals have to be treated equally by an administrative action and such administrative action has to necessarily pass the test of fair play. We rely on the judgment of the Hon'ble Supreme Court in **Man Singh v. State of Haryana, (2008) 12 SCC 331,** at page 337, extracted hereunder, in stating the above:

> ***20.*** *We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.*

The decision of the respondents to impose a penalty which is comparatively severe than the one imposed on N.G. Naidu, fails the test of fair play and is against the legal principle laid down above by the Hon'ble Apex Court.

VI. For having not followed the above legal principles by the respondents in imposing the penalty under reference, the penalty imposed by the disciplinary authority vide Order dated 25.10.2018, as modified by the appellate authority vide Order dt.31.01.2019, and upheld by the Revising Authority on 06.01.2020, is quashed and set aside. Consequently, we remit the matter back to the respondents for reviewing the penalty imposed as per the directions of the Hon'ble High Court dt.28.08.2018 in

WP No. 29579 of 2018, in letter and spirit and in accordance with the observations of the Hon'ble Apex Court as has been brought out supra. Time granted to do so is 3 months from the date of receipt of this letter.

VII. With the above directions the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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