CENTRAL ADMINISTRATIVE TRIBUNAL,

JAMMU BENCH, JAMMU

Jammu, this the 13th day of October, 2020

Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Original Application No.061/00185/2020

Inderjit Singh, S/o Saroop Singh, R/o H.No.219, Sector-3, Channi Himmat, Jammu. Presently posted as Station Superintedent, Railway Station Bari Brahmana (Division Ferozpur Cantt), Samba (J&K).

.....Applicant.

(By Advocates: Mr. R.K. Bhatia)

V E R S U S

1. Union of India through Secretary, Ministry of Railways, Govt. of India, Raisina Road, New Delhi.

2. Chief Operating Manager, Northern Railways, HQ Office, Baroda House, New Delhi.

3. Additional Divisional Railway Manager, Northern Railways, Divisional Office, Ferozpur Cantt., Punjab.

4. Senior Divisional Operation Manager, Northern Railway, Divisional Office, Ferozpur Cantt., Punjab.

……. Respondents.

(By Advocate : Mr. P.S. Chandel)

O R D E R

By Hon'ble Mr. Rakesh Sagar Jain :

The applicant Inderjit Singh has filed the present O.A. under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

> "(i) Applicant prays for quashing of orders dated 31.01.2011, 16.05.2016 and 03.08.2018 (Annexures A1 to A3 respectively)

2. The brief facts of the present O.A. are that respondents issued a charge sheet (Annexure A4) against the applicant that on (1) 14.03.2001, applicant allowed depositing of Rs.37750/- in the ASM safe without any entry in the station master journal and (2) thereby facilitating some persons to misappropriate the money. Accordingly, departmental proceedings were initiated against the applicant Inderjit Singh under the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'DAR') charging him, as per, the Charge- sheet with commission of the above act and thereby violating the provisions of Rule 3 (i), (ii) and (iii) of the Railway Servant (Conduct) Rules, 1966.

3. Along with the charge sheet, imputation of misconduct, list of documents and list of witnesses were served on the applicant. As the applicant did not admit the charge, an Inquiry Officer (IO) was appointed. After holding the enquiry, the inquiry officer found the

charge stands proved to the extent that the applicant allowed the third bag to be deposited in the ASM safe without making entry in the station master journal without any escort and rest of the charge was not proved against the applicant vide his inquiry report dated 18.08.2010 (Annexure A5) and submitted the Inquiry report to the Disciplinary Authority. The finding of the IO being "Charge stands proved to the extant that CO allowed depositing of 3rd bag in the ASM safe without making the entry in the Station Master Journal without any escort. Rest of part charge not proved due to lack of positive evidence".

4. The Disciplinary Authority (DA) (Respondent No. 4) examining the entire evidence and also taking into account the representation made by the applicant against the inquiry report, while accepting the inquiry report observed that the applicant was instrumental in misappropriation of Government cash by booking staff and vide order dated 31.01.2011 (Annexure A1) imposed the punishment of reduction of one stage of pay in the same time scale for a period of one year with cumulative effect.

5. Applicant filed an appeal under Rule 18 of DAR before the Appellate Authority (AA) (Respondent No. 3) who vide impugned order dated 16.05.2016 (Annexure No. A2) after discussing the

evidence and the grounds taken by the applicant rejected the appeal. In the revision filed by the applicant, the Revisional Authority (RA)(Respondent No. 2) vide order dated 03.08.2018 (Annexure No. A3)upheld the punishment imposed by the DA and confirmed by the AA.

6. Apart from challenging the validity of the orders of the DA, AA and RA on a host of grounds, the applicant has averred that the DA disagreed with the report of the IO. So, on this disagreement, it was incumbent upon the DA to supply a copy of his disagreement note to the applicant to enable him to file a representation against the disagreement note. Failure of the DA to supply copy of the disagreement note resulted in violation of not only the principles of natural justice but also in violation of the statutory rule framed vide Rule 10(2)(a) of the Railway Servants (Discipline and Appeal) Rules, 1968. Therefore, the order of the DA is liable to be set aside and quashed.

7. The stand of the respondents in the counter affidavit has been that the entire disciplinary proceedings were conducted in accordance with the rules and regulations and there has been no violation of law. The impugned orders were passed after observing

all the provisions of law. The O.A. being meritless deserves to be dismissed.

8. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record as well as written arguments filed by the parties.

9. In order not to burden this Order with unnecessary details, at the onset it may be stated that the impugned order dated 31.01.2011 (Annexure A1) of the DA is set aside on the grounds as discussed below that the 'disagreement note' of the DA with the inquiry report to the detriment of applicant was not prepared and consequently not supplied to the applicant but penalty was imposed on the applicant by the D.A.

10 Before, dwelling on the arguments of the applicant challenging the inquiry report, the law regarding the scope and limitation of judicial review and the judicial review power available with the Tribunal to look into the disciplinary proceedings and re-appreciation of the evidence has been settled by the Hon'ble Apex Court in:

(1) K.L.Shinde Vs. State of Mysore (1976) 3 SCC 76) :-

"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."

Again in the case of B.C.Chaturvedi Vs. UOI & Others, AIR 1996 SC 484:-

"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 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 office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as

appellate authority to reappreciate 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 reappreciate 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".

Recently 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 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 influence by irrelevant or extraneous consideration;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person couldever have arrived at such conclusion;

g. the disciplinary authority had erroneouslyfailed 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.”

11. The common thread running through these decisions of the Hon'ble Apex Court are that generally the Tribunal should not interfere with the decision of the executive in the matters of disciplinary proceedings unless those are found to be suffering from certain procedural, legal and statutory improprieties and infirmities.

12. Therefore, it is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

13. It was vehemently argued by learned counsel for applicant that the order of the disciplinary authority is vitiated due to non-application of mind and for non-compliance of the statutory provisions. The DA acted wholly illegally in overturning the finding of the inquiry officer exonerating the applicant from the 2nd part of the charge without firstly, recording reasons for disagreement with that finding and secondly, by non-furnishing the tentative disagreement note to the applicant and hearing him against the reasons for disagreement. By adopting this course, the DA acted not only contrary to the principles of natural justice but also in violation of the statutory rule framed vide Rule 10(2)(a) of the Railway Servants (Discipline and Appeal) Rules, 1968 as well as RB No. E (D&A) 87 RG-6-151 of 04.04.1996 (RBE No. 33/96) issued by the Railway department. Therefore, the order of the DA is liable to be set aside and quashed and placed reliance upon PNB v/s Kunj Bihari Mishra, AIR 1998 SC 2713.

14. On the other hand, learned counsel for respondents submitted that the correct procedure was adopted by the DA and the holding of 2nd part of the charge to be proved is based on the evidence gathered on record during the course of inquiry proceeding, as such, no prejudice has been caused to the

applicant in his defence by non-supply of the disagreement note of the DA before disagreeing with the inquiry report to the extent of holding the entire charge to be proved against the applicant.

15. The basic contention of the applicant is that the Inquiry Officer found 2nd part of the Article of charge as not proved, where without giving any Disagreement Note, the DA at his own whims held the 2nd part of charge as proved is not at all sustainable under the law inasmuch as no such reasons for Disagreement, if any, has been recorded and applicant has not been supplied the reasons for disagreement to enable him to make representation against such disagreement.

16. Having regard to the rival submissions of learned counsel for the parties and on perusal of record, the question arises for consideration of this Tribunal is as to whether while disagreeing with the findings and recommendation of inquiry officer, the disciplinary authority was required to give opportunity of hearing to the petitioner at that stage or at any rate, the disciplinary authority was bound to record its reason for disagreement with the findings of inquiry officer and give the tentative reasons for his disagreement with the inquiry report to the applicant for his written representation or submission to the DA?

17. Rule 10 (2)(a) of DAR provides for recording of Disagreement Note which stipulates as here under: The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its tentative reasons for such disagreement and require the Railway servant to submit his written representation or submission to the DA.

18. We may refer to Union of India Vs. S.K. Kapoor, (2011) 4 SCC 589, wherein the Hon'ble Apex Court has held that if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. In the present case, although consultation with the UPSC is not the issue, however, by taking into account the similar principle, we are of the opinion that as the Disciplinary Authority in the present case had disagreed with the finding of the Inquiry authority on 2nd part of the Charge and as per Rule 10 (2) (a) of the Railway Servants (Discipline and Appeal) Rules, 1968, reasons of disagreement should have been recorded and Disagreement Note should have been supplied to

the applicant by the Disciplinary Authority before imposition of the penalty order to avoid violation of principles of natural justice.

19. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of Punjab National Bank and others vs. Kunj Bihari Misra reported in AIR 1998 SC 2713 to strengthen his argument that when the DA disagrees with the inquiry report, the DA should record tentative reasons for disagreement and the same should be given to the charged official to represent on the findings before proceeding further. Regarding facts, it is observed in the cited judgment as under:-

> "In these two appeals the common question which arises for consideration is that when the inquiry officer, during the course of disciplinary proceedings, comes to a conclusion that all or some of the charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the delinquent officer.
>
> XX XX XX
>
> (4) On the receipt of the reports from the inquiry officer the disciplinary authority, namely, the Regional Manager of appellant bank, to whom the reports were submitted, did not agree, in the case of Misra, with the findings of the inquiry officer in respect of charges two to six and by a short order dated 12th December, 1983 passed an order holding that it was an undisputed position that Misra being Assistant

> Manager was in the joint custody of the keys of the currency chest and he had personal responsibility towards the safe custody of the cash and that no material had been placed during the inquiry proceedings to establish that he had discharged his duties in the manner expected of him. The disciplinary authority accordingly held Misra to be responsible for the shortage in question and held that a minor penalty of proportionate recovery ought to be imposed on the respondent for the loss of Rs.1 lac caused to be the bank due to negligence on his part in the discharge of his duties. Similarly in the case of Goel the disciplinary authority did not agree with the inquiry report and passed an order dated 15th December, 1983 directing proportionate recovery of the loss of Rs. 1 lac caused to the bank by him. It may here be noticed that during the pendency of these disciplinary proceedings both Misra and Goel superannuated on 31st December, 1983. The disciplinary authority accordingly directed the recovery of the money from the bank's contribution to the provident fund of the respondent officers."

After examining the Regulation of the Bank applicable for the disciplinary proceedings and earlier judgments, Hon'ble Apex Court held as under:-

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge

then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

20. The Hon'ble Supreme Court considered a case similar to the case we are adjudicating in the present OA, where the Honourable Supreme Court examining the provision in Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (This is similar to the Rule 10 (3) of the DAR) which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge and the only requirement is that it shall record its tentative reasoning for such disagreement. The case is Yoginath D. Bagde v. State of Maharashtra, AIR 1999 S.C 3734, after referring several earlier decisions in paragraphs 30 to 33, Hon'ble Apex Court observed as under:-

"30. Recently, a three-Judge Bench of this Court in Punjab National Bank v. Kunj Behari Mishra (1998) 7 SCC 84: AIR 1998 SC 2713: (1998 AIR SCW 2762: 1998 Lab IC 3012: 1998 All LJ 2009), relying upon the earlier decisions of this Court in State of Assam v. Bimal Kumar Pandit (1964) 2 SCR 1: AIR 1963 SC 1612; Institute of Chartered Accountants of India v. L.K Ratna (1986) 4 SCC 537: (AIR 1987 SC 71) as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727: (1994 AIR SCW 1050: AIR 1994 SC 1074: 1994 Lab IC 762) and the decision in Ram Kishan v. Union of India (1995) 6 SCC 157:(1995 AIR SCW 4027: AIR 1996 SC 255), has held that (AIR 1998 SC 2713: 1998 AIR SCW 2762: 1998 Lab IC 3012: 1998 All LJ 2009, para 17):

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such

conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

31. The Court further observed as under (AIR 1998 SC 2713: 1998 AIR SCW 2762: 1998 Lab IC 3012: 1998 All LJ 2009, para 18):

"When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

32. The Court further held that the contrary view expressed by this Court in State Bank Of India, Bhopal v. S.S Koshal., 1994 Supp (2) SCC 468: (1994 AIR SCW 2901) and State Of Rajasthan v. M.C Saxena (1998) 3 SCC 385: (1998 AIR SCW 965: AIR 1998 SC 1150: 1998 Lab IC 1038) was not correct.

33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So

long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not being about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

21. In view of legal position stated by Hon'ble Apex Court it is clear that a delinquent employee has right of hearing at the stage at which findings of IO are considered by disciplinary authority and the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by enquiry officer. If the findings recorded by enquiry officer are in favour of delinquent employee and it has been held that the charge/s are not proved, it is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of inquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution. This right being a

constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

22. In the factual circumstances as discussed above, on the issue relating to violation of the rule 10 (2) (a) of DAR, it is noted that the DA had not issued a note of disagreement indicating tentative reasons for which he did not agree with the report of the IO and seek representation of applicant against his disagreement and after considering the representation of the applicant, the DA could have imposed the penalty upon the applicant. Applying the ratio of the judgment of Hon'ble Apex Court in the case of Yoginath D. Bagde (supra), Kunj Bihari Misra (supra) and S.K. Kapoor (supra), we are of the view that there has been violation of the rule 10 of the DAR by the disciplinary authority in not communicating the reasons for his disagreement with the inquiry report and imposing the punishment upon the applicant, as such, in view of the ratio of the judgments of Hon'ble Apex Court referred herein before, in our opinion, the order impugned passed by disciplinary authority is erroneous, therefore, cannot be sustained.We may also refer to RB No. E (D&A) 87 RG-6-151 of 04.04.1996 (RBE No. 33/96) issued by the Railway department which supports the

contention advanced by the learned counsel for applicant. We are unable to agree with the contentions of the respondents that there is no violation of the rules in this case.

23. Accordingly, the order dated 31.01.2011 passed by the Disciplinary Authority has to be considered as violative of the Rule 10 of DAR, as such, order dated 31.01.2011 is set aside. Consequently, the appellate order dated 16.06.2016 passed by respondent No. 3 and order dated 03.08.2018 by respondent No. 2 are also set aside. We direct the respondents' authority to proceed with the disciplinary enquiry after supplying copy of Disagreement Note to the applicant to enable him to submit his defence in a time bound manner and to conclude the proceeding in accordance with law within the earliest possible period. O.A. is accordingly disposed of. No orders as to cost.

(MOHD JAMSHED)
Member (A)

(RAKESH SAGAR JAIN)
Member (J)

/JK/