Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD
*****

(THIS THE 15 DAY OF October, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.1017 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Pooran, aged about 62 years,S/o Late Shri Bhupat, R/o Village & Post-Sonari, District-Agra.

..... ***Applicant***

Present for Applicant : ***Shri Rakesh Verma, Advocate***

Versus

1. *Union of India, through the General Manager, Western Railway, Church Gate, Mumbai.*
2. *The Principal Chief Engineer, Western Railway, Office of the General Manager, Church Gate, Mumbai.*
3. *The Senior Divisional Engineer (HQ), Western Railway, Kota.*
4. *The Divisional Engineer (C), Western Railway, Kota*

..... ***Respondents***

Present for Respondents : ***Shri Anil Kumar, Advocate***

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The following orders are under challenge in this O.A.

A. Order dated 03rd June 2002 of the Disciplinary authority whereby the applicant had been awarded the penalty of compulsory retirement;

B. Order dated 14th February, 2003 of the Appellate Authority; and

C. Order dated 24th January 2005 of the Revisionary Authority.

2. Brief Facts of the Case:-

I. The initial appointment of the applicant was in February, 1979 as a substitute Gangman whereafter, he was to be considered for promotion to the post of Permanent Way Mistry in the pay scale of Rs 380 – 560.

II. According to the applicant, he qualified in the VIII standard in 1970-71 from Junior Samudaik School, Sonari and it was on the basis of the above qualification that his promotion as stated above was to be considered.

III. While he was expecting the promotion, he was served with a charge sheet under Rule 9 of the Railway Servants (discipline and Appeal) Rules, 1968 and the charge inter alia was that the applicant had submitted a false education certificate. Annexure A-IV refers.

IV. After inquiry was conducted, the applicant was removed from service by the disciplinary Authority. Appeal against the above order not being successful, the applicant preferred a revision and the revisional authority by annexure A-V order dated 28th

September, 1994 remitted the matter back to the disciplinary authority to hold a de novo inquiry. By this order, the applicant was to be supplied with the copy of the finding of the inquiry officer so as to enable him to make suitable representation and that the case has not been properly inquired into inasmuch as –

i. the existence of school at the relevant time either not been established.

ii. The applicant being a railway employee since 1969, how come he could have appeared and passed 8th Standard in 1971 for which he was to attend the classes regularly.

V. The inquiry officer thus, conducted further inquiry and rendered his report and the applicant furnished his Annexure A VI representation dated 24th November, 2001.

VI. The Disciplinary authority, thereafter passed the order of compulsory retirement, vide Annexure A-1 order dated 3rd June 2002.

VII. Appeal against the same vide Annexure A-VII dated 18th July 2002 was rejected by the Appellate authority vide Annexure A-II order dated 14th February 2003.

VIII. The applicant filed a revision petition, vide Annexure A-VIII dated 25th March, 2003.

IX. In view of non disposal of the above mentioned revision petition, even after six months the applicant preferred an Original Application which was disposed of at the admission stage itself with a direction to the revisional authority to decide the revision petition by a reasoned and speaking order. It was thereafter, that the revisional authority decided the revision petition vide Annexure A-III order dated 24th January 2005 whereby he had confirmed the penalty, with the observation that the misconduct was indeed more severe for award of a graver penalty, but lenient view has been taken due to the normal superannuation of the applicant.

3. It was against the above mentioned orders (penalty order, appellate order and revision order) that the applicant has filed this O.A. The main thrust in the challenge of the impugned orders is that the finding of the inquiry officer nowhere reflects that the applicant has furnished a false education certificate. The School where the applicant studied was very much in existence which disproves the statement of imputation that there was no school of that name called Junior Samudayik School, sonari and the decision to penalize the applicant was on the ground that the school was not recognized, an

aspect which has not been put forth to the applicant at all to meet with. Further, the order of penalty included that no permission has been sought from the respondents for prosecuting the education and thus, the misconduct is proved. Appellate order has been challenged on the ground that none of the grounds taken in the appeal has been considered (for e.g. that the school has been a recognized one had been furnished by the Inspector of School, Agra which had been annexed to the appeal, but the same has not been considered) and thus, the appellate order is a reflection of non application of mind. Revisional authority's order too suffers from grave illegality inasmuch as when no hearing took place, the order reflects as if hearing was given to the applicant. That the applicant's qualifying in the VIII standard had been duly endorsed in the service book as early as in 1974 duly authenticated by a Gazetted Officer (copy at Annexure A-IX) but the same had not been considered. The reasons contained in the Revisional Authority's order are not relating to the charges made against the applicant. Extraneous reasons have been taken into account. Thus, there is a clear violation of the principles of natural justice, which vitiated the entire proceedings.

4. Respondents have contested the O.A. They have stated that the applicant failed to produce the original certificate of his VIII qualification nor could he prove that the school where he claimed to have studied was in existence. Thus, the inquiry officer has conducted the enquiry and gave his findings in detail with reasons. The disciplinary authority has imposed the penalty after examination of

the record and after granting personal hearing to the applicant. The finding of the inquiry officer was that in 1970-71 there was no such approved or government recognized school. Annexure CA I is the letter of District Basic Education Officer Agra, dated 28th July 1993 The applicant who had been in the employ of the Railways since 1969 did not obtain any permission from the Railways for attending regular classes and also for appearing in examination for 8th Standard. The applicant was asked to have a personal hearing but the said communication was returned undelivered vide Annexure CA III.

5. The applicant filed his rejoinder, in which he had reiterated his earlier stand. Further supplementary counter and rejoinder have been exchanged hammering home the respective stand taken in the OA and counter.

6. Counsel for the applicant took us through the charge vide annexure A IV. The charges are as under:-

"(i) that he submitted his false education certificate regarding passing Class VIII to the Railway Administration.

(ii) that he on the strength of such false certificate applied for the post of Permanent way Mistry, Scale Rs.380-560(R) showing falsely his qualification as Class VIII pass in October, 1984.

(iii) that he on the strength of such false educational certificate appeared in the selection of P.Way Mistry on 7.3.1986.

(iv) that he by doing above acts attempted to dupe the Railway Administration with mala fide intention and his ulterior motive of getting promotion."

7. The counsel then referred to the disciplinary authority's order vide annexure A-1, especially the conclusion portion which reads as under:-

"उक्त व्यक्तिगत सुनवाई में जॉच अधिकारी द्वारा दी गयी निष्कर्ष की प्रति, आरापेत कर्मचारी द्वारा दिये गये बचाव, चीफ इंजीनियर द्वारा केस पुनः रिमार्क्स के साथ भेजने संबंधी टिप्पणी तथा मानक पत्र सं0 5 में आरोपित कर्मचारी पर लगाये गये आरोप संबंधी संलग्न किये गये दस्तावेज व जॉच के दौरान दिये गये बयानों की विवेचना करने के पश्चात् में निम्न नतीजे पर पहुॅचा हूॅ।

1. सामुदायिक जे.एच. स्कूल सुनहरी जिसमें आरोपित कर्चचारी द्वारा पढ़ाई की गयी तथा क्लास 8वीं की परीक्षा दी गयी आरोपित कर्मचारी के अध्ययन के दौरान मौजूद था परन्तु यह स्कूल मान्तया प्राप्त नहीं था। जिसे जॉच अधिकारी ने भी अपने निष्कर्ष में पाया है कि यह स्कूल सरकार से मान्यता प्राप्त नहीं था तथा इस संबंध में जिला यू.पी. सरकार के जिला बेंसीक शिक्षा अधिकारी द्वाराजारी गयी लिस्ट जो कि आगरा जनपथ में नगर क्षेत्र में व ग्रामीण क्षेत्र में स्थित स्कूलों के संबंध में है जो कि सरकार से मान्यता प्राप्त है में भी इस स्कूल का उल्लेख नहीं है। इस लिस्ट में सन् 1935 से लेकर 2000 तक की सभी स्कूलों का विवरण है।

*2. आरोपित कर्मचारी द्वारा रेल सेवा आचरण नियम के अनुसार अपने कार्यकाल के दौरान प्राइवेट या सरकारी सकूल में अध्ययन करने से पूर्व रेलवे प्रशासन से सक्षम अधिकारी की पूर्वानुमति आवश्यक है जो कि आरोपित कर्मचारी द्वारा नही ली गयी इस संबंध में आरोपित कर्मचारी का यह बयान कि उसके द्वारा छुटटी के आवेदन में उक्त का उल्लेख था मान्य नहीं किया जा सकता। क्योंकि वह रेल आचरण सेवा के अनुसार नहीं था। इसके लिए आरोपित कर्मचारी द्वारा छुटटी के दस्तावेज के संबंध में कोई भी साक्ष्य प्रस्तुत नहीं किया गया है।इस संबंध में आरोपित कर्मचारी स्वयं ने यह माना है कि उसके द्वारा इस संबंध में जानकारी नहीं होने के कारण पुर्वानुमति नहीं ली है चूॅकि **इरा केरा** में पूर्व में आरोपित कर्मचारी की रेल सेवा को निष्काषित किया जा चुका है। जिसे अपील ऑथिरिटी ने भी यथावत रखा था। परन्तु पुनरिक्षण अधिकारी ने उसे निरस्त करते हुये पुनः जॉच हेतु निर्देशित किया गया था तदानुसार जॉच की गयी और आरोपित कर्मचारी पर लगाये गये आरोप सिद्ध होना पाया गया। पुनरिक्षण आधिकारी दिये गये बिन्दुओं की भी जॉच की गयी जिसका विवरण ऊपर उल्लेखित किया गया है।"*

8. The counsel vehemently argued that the above conclusion is not even distantly related to the charge. The charges relate to furnishing of false education certificate, and applying for and participating in the selection for the post of Permanent Way Mistry by producing such false certificate. However, the conclusion of the Disciplinary authority is that the school was no doubt existing but

the same was not a recognized school; and that the applicant has not obtained any prior permission to undergo the course in the school. The counsel argued that the charge is not that the applicant claimed the institution as recognized one nor does it relate to failure to obtain prior permission for undergoing the VIII Class Education. Thus, when the conclusion arrived at by the Disciplinary authority was on a particular aspect, about which there was no charge, the decision of the Disciplinary authority is perverse and the principles of natural justice gets thoroughly frustrated without being complied with. Again, vide his appeal at Annexure A-VII, that the disciplinary authority's order was perverse, manifestly wrong and against the weight of evidence had been specifically contended. In addition, it has been specifically stated that the conclusion that the school though in existence had not been recognized and thus the charge stands proved is totally out of scope of the point under investigation. Again, it is wrong to hold that the said school was not recognized for, recognition was granted by the UP government on 08th January 1970 vide No. 4360/1 29035. Again, the disciplinary authority had held that the applicant had not obtained the prior permission which is a pre-requisite for prosecuting studies. This again is not the charge. Thus, the entire proceedings have been vitiated.

9. Counsel for the respondent argued that the question was whether the certificate was false or not. When there was no school in existence, the very same proves that the certificate was false. The aspect of recognition as well as permission not having been obtained

are all factors which had come into existence after the revisional authority has remitted the matter back for de novo inquiry. There is absolutely no flaw in the conduct of the inquiry and thus, the OA is liable to be dismissed.

10. Arguments were heard and documents perused. For the applicant to prove his innocence he has to disprove the allegations levelled against him. The charge was that he has given a false education certificate. How the certificate was false is given in the statement of charge that ***it was found that there is no school with the name as 'Samudayak J.H. School at Sunari".*** In the penalty order, however, the disciplinary authority holds that though the school did exist, it was not a recognized institution and hence, the charge is proved. Again, to prove that the certificate is false, the authority has held that since prior permission to prosecute the education during the time the applicant was serving in the department is a pre-requisite which the applicant did not obtain, the charge is proved. Now, it is to be analysed as to whether the above two reasons given i.e. school is not recognized one and the applicant did not obtain prior permission to undergo studies could be the rational reasons to arrive at the conclusion that the charge (that the applicant had furnished false certificate) stands proved.

11. The charges are only production of false certificate and attempt to obtain unintended benefit out of the same. If the first charge is not proved, other charges automatically sink into oblivion.

12. A certificate would be held to be false if the school authority denies issue of such certificate. Similarly a certificate could be false if there is no such school. In fact, **as per the statement of imputation, the very school named Junior Samudaik School, Sonari was not in existence at all. Later on in the second round, the disciplinary authority has stated that true, the school was in existence, but the same was not recognized. Hence, the certificate is false!** When the above is the conclusion then the charge should have been to the effect that the applicant furnished a certificate of education from a school which was not recognized. Here again, production of certificate from an unrecognized school by itself would not amount to a misconduct. If the applicant had stated that the school is recognized, whereas, it is not so, then only it would amount to a misconduct. In that event also, he should be given an opportunity to prove his case. In the inquiry proceedings, the applicant was charged only with furnishing of false certificate on the ground that the school was not in existence. But as per the authority itself, the school was in existence. Thus, it cannot under any yardstick be held that the charge of furnishing of false certificate stands proved.

13. Second reason for the conclusion that the certificate is false is that the applicant could not have attended the school as he had not obtained permission from the respondents to prosecute his education. Here again the finding is perverse as non – obtaining of permission from the respondents to prosecute the studies was not the

charge. The submission of the applicant that he had attended the school by applying for leave has been simply disbelieved stating that the applicant had not produced any documentary evidence.

14. Thus in the totality of circumstances, it cannot be held that the applicant had ever been given an opportunity to meet the charges for the charge was something and the ultimate finding was some other thing. Hence, it has to be held that the inquiry conducted by the respondents does not meet even the minimum requirement of the principles of natural justice. This is a case of no evidence.

15. In the case of ***State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364,*** the Apex Court has held as under:-

> *" ..... Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.*
>
> ***33.*** *We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):*
>
> *(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/ departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.*
>
> ...
>
> *(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may,* ***the order passed in violation of such a provision can be set aside only where such violation***

has occasioned prejudice to the delinquent employee.*(emphasis supplied)*

.....

(5) Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — ***the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment.*** *In other words, a distinction must be made between* ***"no opportunity"*** *and* ***no adequate opportunity****, i.e., between "no notice"/"no hearing" and* ***"no fair hearing"****. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or* ***Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query****. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (emphasis supplied)*

Again, in ***Union of India v. Gyan Chand Chattar,(2009) 12 SCC 78*** the Apex Court has held as under:-

32. *In Surath Chandra Chakrabarty v. State of W.B. this Court held that it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof. This Court observed as under:*

"5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all

the facts and circumstances that may be in the contemplation of the authorities to be established against him." (emphasis added)

.....

***34.** In **Sawai Singh v. State of Rajasthan** this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.*

35. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

16. In the case of the applicant, the findings are perverse, without giving due opportunity to the applicant to disprove the charge in that the reasons cultiminating into the ultimate conclusions arrived at by the Disciplinary authority are entirely away from the statement of imputations in support of the charge.

17. In view of the above the entire proceedings have been vitiated, resulting in the quashing of the Annexure A-1 (disciplinary authority's order of penalty), Annexure A-2 (order of the Appellate authority) and Annexure A-3 (order of the Revisionary authority). The applicant is entitled to the consequential benefits as hereunder:-

(a) He is entitled to be treated as continued in service in the grade in which he was serving prior to his compulsory retirement.

(b) The applicant's case should be considered for selection as Permanent Way Mistry in the erstwhile grade of Rs 380 – 560, and if his promotion was not granted only due to the alleged false certificate, his promotion should be effected but as at this distance of time it may not be possible for the respondents to set the clock back to 1987 and afford the applicant the seniority and the consequential benefits, the benefits could be restricted to grant the applicant the scale of pay in the post i.e. 380-560 with annual increments as per rules (including increment on crossing the Efficiency Bar if applicable) till the date of his superannuation as well as the revision of pay scale as per the Pay Commission Recommendations. Such a pay fixation shall be only notional. To make it clear the applicant cannot claim any amount as arrears of pay and allowances but is entitled to difference in the pension and other terminal benefits as contained hereunder.

(c) The applicant is entitled to have his pension fixed on the basis of the notional pay so arrived at as on the last date of his service prior to his normal superannuation and the terminal benefits should also be correspondingly worked out and paid to him.

(d) Suitable orders relating to fixation of pay, revision of PPO, orders for payment of the difference in the terminal benefits such as DCR Gratuity, Leave Encashment etc., shall be passed by the respondents within a period of four months from the date of communication of this order. Payment of the arrears arising out of the same shall be made within a period of two months thereafter.

18. Though due to the vexation caused to the applicant by having the proceedings lingering on since 1987, the applicant could be held to be entitled to heavy cost, the sober way of presentation of the case by the counsel for the respondents has dissuaded us from saddling the respondents with cost.

Member-A **Member-J**

Sushil