

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.
Original Application No. 373/2017**

This the 5th day of May, 2020

Reserved on :25.02.2021
Pronounced on:05.05.2021

**CORAM : Hon'ble Shri Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Smt Shalini S Patil
w/o of late Shri Sanjay R Patil,
(Male: 59 years, Head Pharmacist),
90-F, Swagat Society, Near Muktinagar,
Tandalja, Vadodara – 390 020. ... Applicant

By Advocate Shri O P Khurana

v/s

- 1 Union of India
Through: The General Manager,
Western Railway, Churchgate,
Mumbai – 400 020.
- 2 The Chief Medical Director,
Western Railway, Churchgate,
Mumbai – 400 020. ... Respondents

By Advocate Shri M J Patel

ORDER

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

1 In the instant OA the original applicant Shri S R Patil (Head Pharmacist) being aggrieved by the Appellate Authority's order dated 27.06.2017 (Annexure A/15) whereby pursuant to second stage advice of vigilance dept, its earlier order dated 19.02.2016 of minor penalty into major penalty was modified and order 03.10.2016 (Annexure A/17) with respect to his appeal filed against the order passed by disciplinary authority dated 04.02.2015

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(Annexure A/8), he had filed the present OA u/s 19 of the A. T. Act 1985.

2 It is appropriate to mention that after the matter was finally heard and before pronouncement of the order, unfortunately, the applicant Shri S R Patil expired and his wife Smt Shalini S Patil filed an MA No.61/2021 in present OA No. 373/2017 to join her as legal heir of the deceased applicant. The said MA of widow of Late Shri S R Patil was allowed by this Tribunal. The counsel for the applicant Shri O P Khurana submitted that the written submission filed by him be considered as arguments of the newly added applicant.

3 The brief facts as narrated in the OA are as under:-

3.1 It is stated that while the late husband of the applicant (hereinafter for brevity, referred as Late Shri S R Patil), was working as Pharmacist Grade II under Sr. DMO/BRC (P) Vadodara Division, he was served with a memorandum dated 26.08.2013 (Annexure A/1) by the disciplinary authority (in short referred to as DA) in standard form of charge sheet under the provision of Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 (in short referred as “Railways D & A Rules, 1968”). This was based on a vigilance investigation.

3.2 Along with the aforesaid memorandum the draft of articles of charges, statement of imputation of misconduct, list of documents and the list of witnesses were also supplied. The following charges were leveled against him as per Annexure -1 of the Memorandum:

Article of Charges :

“ Shri S.R.Patil while working as Sr. Pharmacist under Sr.DMO/BRC (P) Vadodara Division during the period from 2009 to 2011 has committed gross misconduct in as much as that:

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(1) *Shri S.R.Patil, Sr. Pharmacist, Health Unit/ BRC(P) as custodian and over all incharge of the Medical Store/ Health unit/ BRC(P) failed to obtained approval of Sr. DMO (I/C) /Health Unit/BRC(P) on the medicine issue register while issuing the medicine from the stores of the Health unit/BRC(P) period from 01.01.2009 to 12.12.2011.*

(2) *Shri S.R.Patil, Sr. Pharmacist, Health Unit/ BRC(P) made lot of “fake entries” in concern tally/expense book without support to prescription slips and failed to maintain proper accountal of medicines in tally book/expense book in accordance to IRMM.*

By these above act of misconduct, Shri S R Patil while working as Sr. Pharmacist under Sr. DMO/BRC (P) has failed to maintain absolute integrity, exhibited lack of devotion to his duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rules 3.1 (i), (ii) & (iii) of Railway Services (Conduct Rules) 1966.

3.3 Since the charges were framed based on vigilance check as stated in sub para 1.3 of Annexure – II of the charge memorandum dated 26.08.2013 (Annexure A/1), the late applicant through his application dated 07.09.2013 (Annexure A/3) requested the disciplinary authority to provide him copy of “Joint Note” issued by one Shri Sanjay Upadhyay working as Chief Vigilance Inspector (CVI)/BRC and who is cited as PW-1 in the Memorandum, to enable him to submit his defense statement. However, vide letter dated 14.10.2013 the DA informed the applicant that in this case “Joint Note” was not prepared by Shri Sanjay Upadhyay, CVI/BRC, hence same cannot be provided. Further he was directed to submit his defense. (Annex A/3 colly.)

3.4 The applicant had submitted his defense statement/reply on 25.10.2013 (Annex. A/4), wherein he mainly stated that it was mandatory for any vigilance preventive check to prepare a “Joint Note” of all the irregularities detected by the vigilance officials and the said Joint Note needed to be signed by all present at that spot. However, in this case the

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said important criteria were ignored by vigilance officer as he was completely unaware of the irregularities detected on 19.03.2012 by vigilance officer. He further contended in the said representation that as regard to charge no.1, he was not the overall in-charge of medical store/Health Unit/BRC(P) as alleged, so the second part of the said charge was also vague because as such, he had obtained token approval of Sr. DMO (I/c) Health Unit BRCT as can be seen in the medicine issue register. With regard to charge no.2, he stated that if any case entries were done by any Railway employee manipulating his official position, the detecting authority should immediately have lodged an FIR and should have had it further investigated. However, in this case, the entries made were not fake but actual.

Further, he stated that in para 2.0 of the charge memorandum, the DA had mentioned that “facts and observation in regard to allegations,” the said assertion on the part of DA is absolutely illegal; when the charges framed were not got inquired into, nobody should assume the fact of the charges framed. In other words, the DA acted as an Enquiry Officer and presumed the facts and made up his mind to impose penalty as per wish of DA & Enquiry Officer. Further, it is stated that in this case, the Chief Vigilance Inspector had been marked as PW-1. However, the other staff who were directly involved in the case i.e. Sr. DMO/BRC (P) HU, who was in overall charge of Health Unit and the person dispensing the medicines to patients i.e. Jr. PHR, who is supposed to collect the prescription slips of medicines and to keep in safe custody are not marked as Prosecution Witnesses. They should also have been incorporated as PWs. He also stated that charges

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were vague. The applicant has denied the charges leveled against him and requested the DA to drop the same.

3.5 On denial of charges by the CO i.e. late S R Patil, the DA appointed Railway Inquiry Officer and Presenting Officer to inquire into the charges leveled against the applicant.

3.6 The applicant participated in the inquiry wherein he raised certain objections with regard to discrepancy in conducting the inquiry. At the same time, the applicant has cross examined and had also asked questions to PO. Thereafter, the Inquiry Officer declared the inquiry concluded and submitted his inquiry report dated 19.11.2014. In the said Inquiry report, the I.O. recorded his conclusion that the charges leveled against the applicant were established. On receipt of copy of the said Inquiry Report, the applicant had submitted his representation dated 04.12.2014 (Annexure A-7) by explaining the lacunae in the report of IO including the violation of principles of natural justice and requested the DA to cancel the charges.

However the DA, by accepting the report of Enquiry Officer decided that the charges leveled against the applicant had been proved and vide order dated 4.2.2015 issued NIP for major penalty of Removal from Service (Annexure – A/8),

3.7 Aggrieved by the said penalty order dated. 04.02.2015, the applicant had filed an appeal before the Appellate Authority on 09.03.2015 (Annexure A/10).

3.8 Since the said appeal of the applicant remained pending for long time before the AA, the applicant approached this Tribunal by way of OA 430/2015. Considering the pendency of said appeal, this Tribunal allowed the OA vide

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order dated 27.11.2015 with an observation that “*it is to be considered by the concerned authority/ diminishing of the livelihood will diminish life also, which then would be a violation of Constitution of India as well*” and directed the Appellate Authority to dispose of the pending appeal by a speaking order within a period of two months. (Annexure A/11 referred).

3.9 Pursuant to the aforesaid direction issued by this tribunal, the Appellate Authority (Chief Medical Director i.e. CMD respondent no.2 herein) had considered the pending appeal of the applicant by giving an opportunity of personal hearing and vide order dated 19.02.2016 (Annexure A/13) **the AA had reduced the major penalty of “removal from services” into “reinstatement of the applicant with penalty of “stoppage of increment for a period of two years without any future effects and transferring and posting the applicant to a convenient and suitable place other than his last place of posting(i.e. minor penalty) .“**

3.10 It is stated that a copy of the aforesaid order dated 19.02.2016 was forwarded by the office of General Manager (E) i.e. respondent no.1 herein vide its communication dated 24.02.2016 (Annexure A-13 Colly.) to DRM(E)BRC with the instructions/ direction “*that the CMD (Appellate Authority) reduced the penalty, since this is a vigilance case and order of the Appellate Authority are in variation with vigilance advice of major penalty, CMD’s order will be provisional and will be required to be sent to Vigilance for their advice. Hence, CMD’s provisional order is enclosed as Annexure A and request to take further action to consult the vigilance on this case. The outcome of the consultancy with the vigilance should be advised to this office in order to obtain CMD’s final orders in this case.*”

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Thereafter, vide letter dated 01.6.2016, the AVO (M) for SDGM & CVO/CCG (i.e. Vigilance Department) HQ Western Railway Mumbai informed the DRM(E) BRC that *“the decision of the AA is not acceptable as it does not commensurate with the gravity of offence and is not in line with vigilance advice. As such, the AA may review his decision”*. (Annexure A-14).

3.11 Subsequently, without affording any opportunity to the CO i.e late S R Patil, the AA as per the advice of Vigilance Dept. modified his earlier order dated 19.02.2016 and imposed major penalty of *“Reduction by two stages in the time scale for a period of two years with future effect”* vide impugned order dated 27.6.2016 (Annexure A-15). Thereafter, vide another impugned order dated 3.10.2016 (Annexure A-17), the AA provisionally decided that intervening period from the date of removal of the applicant to the date of resumption shall be treated as “Not spent on duty” by granting liberty to the applicant to submit representation on it, after considering the representation, the AA passed another order dated 15.3.2017 (Annexure A-18) and ordered that the intervening period from removal to reinstatement be treated as “Leave Due”. Hence this OA.

4 Learned counsel for the applicant Shri O.P.Khurana mainly submitted as under:

4.1 The charge sheet issued by the Disciplinary Authority is verbatim copy of charge sheet as dictated/ framed by the Vigilance Department. (Annexure A-1/A). The statement of imputation of misconduct and supporting document in SF-5 clearly indicates that the charge-sheet itself was issued on the dictum of Vigilance Department. Therefore, the disciplinary authority had never examined the case

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independently and on dictation of Vigilance department, the charge memorandum has been issued. The impugned decision of DA therefore is illegal, arbitrary and unjust.

4.2 There are various fatal flaws in the charge-sheet as the same is not issued by the appointing/ competent authority. It is not signed by the Disciplinary Authority on each page. The imputation of the misconduct as the applicant had failed to maintain absolute integrity, exhibited lack of devotion to his duty and acted in the manner unbecoming of a Railway servant and thereby contravened under Rule 3(1)(i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966 under Annexure -A as to the Articles of charges is not provided under the Railway Servant (Discipline & Appeal) Rules, 1968. Hence, the said charge memo suffers from no infirmities and no action thereon be allowed to stand.

4.3 It is submitted that in absence of Articles of charges as to how the applicant failed in his duty and in absence of specific statement, the said charge suffer from infirmities. The allegations under Sub-para 4.1 to 4.3 of Para 4 under Annexure II of the charge sheet before holding inquiry, exhibit pre-meditated decision of the Disciplinary Authority to punish the applicant.

4.4 It is stated that in the case of applicant the respondents has not followed the mandate of Article 311 of the Constitution of India and the charge sheet was not issued by the competent authority.

4.5 Learned counsel for the applicant submits that in para 2.4 of the statement of imputation of misconduct states that “*a preventive check was conducted in March 2012 of Medical Store/ Health Unit of BRC with a view to account of the Store in which four items were found in excess and the same*

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was registered and Standard Form No.11 was issued in favour of the applicant in the subected case.'

Further, in para 1.2 of statement of imputation it was also stated that "a vigilance check was conducted based on the information received from reliable source regarding irregular activities and misappropriation practices of Shri Sanjay R Patil working as Sr. Pharmacist/Health Unit under Sr. DMO (P), Vadodara." In this regard learned counsel further submits that the charge memorandum was issued on the basis vigilance check report and the applicant had demanded copy of the 'Joint Note' (Annexure A-3) prepared by the CVI-BRC in respect to said vigilance check. Though the "joint note" Annexure A/3 was prepared by the said vigilance department, but the Disciplinary Authority vide communication dated 14.10.2013 (Annexure A-3 Colly.) informed the applicant that No such 'Joint Note' was prepared by CVI-BRC. At this stage, learned counsel also submitted that in fact, the Joint Note dated 19.3.2012 did exist and the vigilance officer, one Shri Sanjay Sanie and one Shri Sanjay Upadhyay had prepared the Joint Note. Copy of it has been produced at Annexure A-5. This also clarifies that DA had not acted fairly and the charge sheet was issued on the dictates of vigilance and material documents had been suppressed. Therefore, the applicant has been deprived of the relevant document to substantiate his defense. The Inquiry was conducted in violation of principles of natural justice.

4.6 It is submitted that right from the stage of initiation of the disciplinary action by the ACMS (Admn.) / Chief Medical Superintend/ Disciplinary Authority upto the highest level of the Chief Medical Director/ Appellate Authority acted in violation of mandatory provision under Rule 9, 18, 19 & 22

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of the Railway servant (D&A) Rules, 1968, as also under provisions of Article 311 (2) of the Constitution of India and erroneously passed the impugned orders.

4.7 The Inquiry Officer and Presenting Officer where appointed as per the direction of the SDGM-CVO (CCG) vide letter dated 04.4.2013 and thereby the Disciplinary Authority had violated the provisions of Rule 9 of (6) of Rules, 1968. In this regard it is further submitted that One Shri Sanjay Saine CVI-BRC who had prepared the Joint Note dated 19.3.2012, was appointed as Presenting Officer in departmental inquiry initiated against the applicant. Therefore, the inquiry proceedings stand vitiated.

4.8 It is submitted that pursuant to the instruction of Vigilance department, the Appellate Authority reviewed the penalty vide its order dated 27.6.2016 and modified it to “Reduction by two stages in the time scale for a period of two years **with future effect**” from “Stoppage of increment for a period of two years **without any future effect**” vide order dated 24.2.2016. The stoppage of increment for a period of two years “**without any future effect**” was changed to “**with future effect**” making the said decision of Appellate Authority violative of Railway Servants (Discipline & Appeal) Rules 1968 as also the law laid down by Hon’ble Apex Court.

Learned counsel placed reliance on the judgment passed by the Hon’ble Supreme Court in case of **U.O.I v/s. Prakash Kumar Tandon** reported in 2009 (2) SCC 541 and submitted that no third party including Vigilance officer has jurisdiction to interfere into the powers of quasi judicial authority. In the present case, the Appellate Authority passed the impugned order solely based on the advice of

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Vigilance Department. Therefore, impugned orders are illegal, against law laid down by the Hon'ble Supreme Court as well in violation of principles of natural justice.

5 Per contra respondents have filed their reply and denied the contentions of the applicant. The learned counsel for the respondents mainly submitted as under:-

5.1 The applicant, while working as Senior PHR under Senior DMO-PRTM at Health Unit, BRCP, was custodian and over all in-charge of the Medical Store/ Health Unit. He failed to obtain the approval of Sr. DMO (In-charge) Heath Unit BRCP on the medicine issue Register while issuing the medicine from the Store from 01.01.2009 to 12.12.2011. The charges were also leveled under the charge memo that the applicant has made lot of fake entries in the concerned tally/expense book without support of prescription slip and failed to maintain proper account of medicines in terms of IRMM.

5.2 It is stated that this disciplinary proceeding is based on complaint and not on preventive check of the vigilance department. Therefore, the grievance of applicant for not supplying Joint Note is misconceived.

The applicant has attempted to mislead the Tribunal by contending that on the basis of vigilance check, joint note was prepared and signed by the officers. In this regard, it needs to be noted that the Joint Note referred by the applicant was related to another case. In the present case, on receipt of the complaint the charge memorandum was issued. Even otherwise the vigilance department is only an advising authority and the charge memorandum issued to the applicant was an independent decision of the DA.

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5.3 It is submitted that the applicant was granted full opportunity to defend his case during the departmental inquiry and on its conclusion, the copy of Inquiry Report was also supplied to the applicant for his representation on it. After receipt of representation of the applicant as also on consideration of findings in the inquiry report, the DA held the charges leveled against the applicant as proved and imposed major penalty of removal from Railway service vide NIP 04.02.2015.

5.4 It is submitted that the order dated 19.02.2016 passed by Appellate Authority reducing the major penalty of Removal from Service into minor penalty of stoppage of two increment without future effect, the said decision was in fact a provisional order as per the instruction stipulated in para 2.1.3, 2.1.4 of GM(E) CCG's letter dated 24.1.2008 (Annexure R-1). It can be seen that as per the instruction no. 2.1.3, for major penalty cases, where the Disciplinary Authority proposed to exonerate or impose a minor penalty, consultation with the Vigilance would be necessary. Further, the instruction contained in para 2.1.4 stipulates that the procedure for consultation with vigilance as described in 2.1.3 would also be applicable in major penalty cases when appellate revising authority propose to exonerate or impose a minor penalty. Therefore, appellate authority after consultation with SDGM-CVO (CCG) i.e. vigilance department, reviewed its decision dated 19.02.2016 and finally passed order dated 27.06.2016 reducing the penalty of Removal from Service into stoppage of two increments with future effect under major penalty. Therefore, there are no procedural infirmities in imposing the penalty upon the applicant, he argued.

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5.5 It is submitted that the competent authority had passed its independent order without influence or interference of the Vigilance Department. The Vigilance Department had only offered their advice and after proper scrutiny of material on record, the competent authority reviewed its order. Therefore, it is not open to the applicant to state that DA/AA passed the impugned order solely on the basis of advice of Vigilance Department.

5.6 It is further submitted that the charges leveled against the applicant have been proved and as per the gravity of misconduct, the penalty has been imposed by the competent authority, which is just and appropriate. The OA deserves to be dismissed.

6 The applicant has filed rejoinder wherein he reiterated the contentions raised in OA and also denied the submission of respondents. Additionally it is stated that the Sr. DMO was the overall in-charge of the Health Unit and always kept the keys of the store room in his personal custody.

6.1 The applicant was working under his instruction and administrative control. Although he used to maintain the medicine register, tally book and expense book of the medical store, junior pharmacist was also there to assist him and handle the registers and maintain the prescription slips. The registers in question were always kept in the personal custody of the Sr. DMO who was duty bound to check and sign those registers daily to ensure that proper entries were made in those registers. The Sr.DMO always avoided and refused to sign those registers, therefore, the said fact was brought to the notice of CMS who recorded his instructions on 07.05.2011 at page no.144 of the daily medicine issue register that the Sr. DMO/BRC (P) must check the entries in

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the registers and daily sign the registers. In spite of the said instructions and directions, the Sr. DMO avoided signing the relevant registers.

6.2 The applicant had contended about the said lacunae with regard to maintenance of register and its approval by Sr. DMO in his written defense dated 09.09.2014 (Annexure A/6) submitted before Railway Enquiry Officer as also in his final defense dated 04.12.2014 (Ann. A/7) submitted before the disciplinary authority. Therefore, neither the Enquiry Officer nor the disciplinary authority considered this important aspect and without there being any cogent evidence against the applicant, the said authority erroneously held that the charges leveled against the applicant had been proved.

6.3 It is denied that order dated 19.02.2016 (Annexure A/13 colly) passed by Chief Medical Director i.e. Appellate Authority in the case of the applicant was a provisional order. In fact there is neither any provision mentioned under R.S. (D&A) Rules, 1968 that any authority may provisionally impose the penalty nor in the body of the said order anywhere which has been stated by the Appellate Authority that its order is provisional one. Therefore, it is not open for the Appellate Authority to review its own order and enhance the penalty vide impugned letter/order dated 27.06.2016. The instructions contained in circular dated 24.01.2008 (Annexure R/1) relied upon by the respondents to justify the action of the AA is in fact quite unfair, unjust and illegal and cannot withstand the test of law, the counsel argued.

6.4 It is also stated that the contention of the respondents that this case was complaint based, where no Joint Note was

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prepared and in this regard their reliance on the letter dated 08.10.2013 is quite faulty and baseless stand of the respondents. In the present case, neither the complaint was cited in the charge sheet nor was a copy thereof supplied. Nor was any complainant cited as prosecution witness in the charge sheet. In the para 2.4 of the charge sheet in Annexure II, it was clearly mentioned that a preventive check was conducted in March 2012. The respondent had not denied that the Joint Note was prepared on 19.03.2012 by the CVIs which is on record at Annexure A/5 (referred). Therefore, it is sufficient indication that the letter dated 08.10.2013 issued by the SDGM and CVO denying the Joint Note prepared by their officer is in suppression of material fact and the said contention is also malicious in nature.

- 7 The learned counsel for applicant has filed written submission wherein the aforesaid submissions have been reiterated and further placed on record copy of previous memorandum SF 11 dated 16.05.2012 for identical charges stating that during the vigilance check on 09.04.2012, certain items were detected in excess and thereby he had exhibited negligence towards his duty for maintaining proper account of medicines and copy of order dated 29.05.2012 – stoppage of six set of passes and six set of CPU as and when due with reference to SF 11 dated 16.05.2012 (Annexure A/1 colly of written submission), copies of provision of relevant rules of R.S. (D&A) Rules, 1968, along with copy of para 407 (7) of the IRMM-duty of medical officer to check the stock of medicines, and copy of order passed by this Tribunal in OA No.101/2006 dated 11.10.2006 in the case of Shri Yogesh Ochhavlal Shah v/s Union of India wherein it was held that no third party either the government or the CVC could interfere in the powers of the disciplinary authority. In addition, the learned

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counsel has also relied upon other judgment to justify his submission that penalty cannot be enhanced merely because vigilance department or any other authority wanted so.

- 8 Heard the learned counsel for the parties. We have perused the material on record.
- 9 It is settled principle of law that the scope of judicial review of decisions of Appellate Authority and Disciplinary Authority with respect to disciplinary proceedings is an evaluation of the decision making process and not the merits of the decision itself. Judicial review seeks to ensure fairness in treatment and not fairness of conclusion. It ought to be used to correct manifest error of law or procedure, which might result in significant injustice, or in case of bias or gross unreasonableness of outcome. In this regard, it is appropriate to refer to the law laid down by three judge Bench in the case of Pravin Kumar v/s Union of India & Ors reported in (2020) 9 SCC 471 wherein the Hon'ble Apex Court after referring to the judgment in the case of (i) State of A.P. v/s Mohd. Narsullah Khan (2006) 2 SCC 373, (ii) B. C. Chaturvedi v/s Union of India (1995) 6 SCC 749, (iii) State of T.N. v/s Subramaniam (1996) 7 SCC 509 (iv) Lalit Popli v/s Canara Bank (2003) 3 SCC 583; and (v) H.P. SEB v/s Mahesh Dhiya(2017) 1 SCC 768 held in para 28 that "*It is thus well settled that the Constitutional Court while exercising their power of judicial review would not assume the role of an Appellate Authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put it differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.*"

Bearing in mind the aforesaid settled principle of law, in the present case we are concerned with the procedure adopted by the

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Appellate Authority in its conclusion in passing the impugned order herein.

10 In the present case, it is noticed that based on the suggestion/advice contained in letter dated 04.04.2013 Annexure A-1/A of the Vigilance Department, the husband of applicant Late S R Patil while working as Sr. Pharmacist was served with memorandum dated 26.08.2013 (Annexure A/1) in standard form of charge sheet S-5 under the provision of Rule 9 of the Railway Servants (D & A) Rules, 1968 by the Disciplinary Authority i.e. ACMM(ADM)/PRTM.

10.1 The charges leveled against the applicant as per draft of articles of charges Annexure A-I, of the said charge memorandum which reads as under:-

Article of Charges :

“ Shri S.R.Patil while working as Sr. Pharmacist under Sr.DMO/BRC (P) Vadodara Division during the period from 2009 to 2011 has committed gross misconduct in as much as that:

(1) Shri S.R.Patil, Sr. Pharmacist, Health Unit/ BRC(P) as custodian and over all incharge of the Medical Store/ Health unit/ BRC(P) failed to obtained approval of Sr. DMO (I/C) /Health Unit/BRC(P) on the medicine issue register while issuing the medicine from the stores of the Health unit/BRC(P) period from 01.01.2009 to 12.12.2011.

(2) Shri S.R.Patil, Sr. Pharmacist, Health Unit/ BRC(P) made lot of “fake entries” in concern tally/expense book without support to prescription slips and failed to maintain proper accountal of medicines in tally book/expense book in accordance to IRMM.

By these above act of misconduct, Shri S R Patil while working as Sr. Pharmacist under Sr. DMO/BRC (P) has failed to maintain absolute integrity, exhibited lack of devotion to his duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rules 3.1 (i), (ii) & (iii) of Railway Services (Conduct Rules) 1966.

Along with aforesaid Charge Memorandum dated 26.08.2013 (Annexure A/1), Statement of Imputation of

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misconduct Annexure A-II, list of documents Annexure A-III as also list of witnesses was supplied to the CO.

10.2 The late S R Patil denied the charges leveled against him by submitting his representation dated 25.10.2013. His objection and grievance about non supply of copy of the Joint Note of Vigilance check, as also his request to drop the charges leveled against him since for the said excess medicine, earlier, he was awarded punishment which amounts to double jeopardy has been considered by the DA and thereafter it was decided by the DA to conduct departmental inquiry against the CO.

It is also not in dispute that the CO i.e. late S R Patil participated in the departmental Inquiry Proceeding and he cross examined the witnesses as well as asked questions to the PO. He submitted his written defense brief dated 08.09.2014 (Annexure A/6) before the Railway Enquiry Officer wherein he stated that no evidence came on surface during the departmental inquiry, further he had offered his explanation that there was no abnormality in dispensing and accounting the stock of medicines and hence the charges leveled against him were false and fabricated, being without proof.

10.3 Thereafter, on conclusion of said inquiry, the Railway Inquiry Officer had submitted his Inquiry Report to the DA wherein he recorded his findings that charges leveled against the CO had been established. The copy of the said Inquiry Report was supplied to the CO, with a direction to submit his representation/reply thereon. In response to it the CO has submitted his reply dated 04.12.2014 (Annexure A/7), before the DA and therein the CO explained that the Inquiry Officer had erroneously recorded his findings and

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requested the DA to reject the report of Inquiry Officer and cancel the charges leveled against him.

Thereafter, the DA, after considering the Inquiry Report, applicant's representation and material on record came to the conclusion that the charges leveled against the CO had been proved beyond doubt and imposed major penalty of "Removal from Service" with immediate effect vide speaking order dated 04.02.2015. Accordingly, the DA had issued Notice of Imposition of Penalty dated 04.02.2015 under the provision of Rule 6 of the Railway Servants (D&A) Rules, 1968.

10.4 From the above it can be seen that the applicant had actively participated in departmental inquiry at every stage. It is also seen that he was granted due opportunity to defend his case. The record reveals that the CO has waived all his objections and actively participated in the departmental inquiry. Therefore, the submission of the CO that during the inquiry he was not granted fair opportunity to submit his defense is contrary to the material of record. Further, after participating in the inquiry and also availing all the opportunity to cross examine and submit the brief note before the Inquiry Officer and the representation on Inquiry report before the DA, in our considered view, now the grievance raised by the CO about the competency of DA in issuing charge memorandum and appointment of EO and PO to conduct inquiry in the present OA are also not tenable at this stage.

11 Further, it is noticed that aggrieved by order dated 04.02.2015 passed by Disciplinary Authority imposing major penalty, the CO had filed a statutory appeal before the Appellate Authority on 09/03/2015. As noted hereinabove, since the said appeal was not

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considered by the AA within time limit prescribed under the rules, the CO had approached this Tribunal by way of OA No.430/2015 which came to be disposed of by this Tribunal vide its order dated 27.11.2015 (Annexure A/11) wherein it was observed that “it is to be considered by an authority that diminishing of the livelihood would diminish life also, which then would be a violation of Constitution of India as well. With the said observation the AA i.e. Chief Medical Director (CMD) i.e. WR, was directed to dispose of the pending appeal by a speaking order.

12 It is specific contention and submission of the learned counsel for the applicant that considering the observation and direction passed by this Tribunal vide order dated 27.11.2015, the Appellate Authority was very kind to afford personal hearing to the CO alongwith his defense counsel, was convinced that the penalty imposed by the Disciplinary Authority was disproportionately heavy and was harsh in nature. Accordingly the **AA vide its first order dated 19.02.2016 was pleased to substitute the major penalty of “Removal from Service” by “Stoppage of increment for a period of two years without any future effect.”(i.e. minor penalty).** However, the AA bowed down before the vigilance department and arbitrarily and illegally reviewed its own order dated **19.02.2016** and substituted the minor penalty vide second order dated **27.06.2016** by major penalty of “Stoppage of increment for a period of two years with future effect.”(i.e. major penalty).

12.1 It is also argued by the counsel for the applicant that subsequent to order passed on 27.06.2016, the AA again vide its **third order dated 03.10.2016** (Annexure A/17) further passed an order with respect to the intervening period, that if the applicant desired to convert it into leave of any kind due and admissible to him in terms of Rule 1343, representation against the provisional decision be submitted

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within fifteen days through proper channel and failure in it would render the decision as deemed final.

12.2 It is also contended by the applicant that vide order 16.03.2017 (Annexure A/18) the respondents informed him that his representation has been considered by competent authority i.e. CMD and has ordered to treat the intervening period from removal to reinstatement (i.e. 04.02.2015 to 30.07.2016) as “Leave Due”.

12.3 It is submitted by the counsel for the applicant that it is not open for the AA to revise its own order. In this regard, the learned counsel has also placed reliance on the instructions contained in circular/order No. E(D&A) 68 RG 6-33 dated 20.08.1968 produced as noting under Rule 25, 25(A) of the Rules 1968 which stipulates that “An authority, even, if he is otherwise a competent authority to revise an order, cannot revise order passed by itself.”

He further submits that there is no provision to issue provisional order while deciding the statutory appeal under provision of Rule 22. It is also submitted that the AA committed procedural irregularity in revising its own order dated 19.02.2016. The AA revised its order solely based on third party intervention as it can be seen from the different order passed by AA that too without affording any opportunity to the CO. It is not open to the AA or any other authority to enhance the punishment by revising the earlier order and put the CO/delinquent to huge financial loss without giving any opportunity to the CO. Therefore, the impugned order is arbitrary and same is in violation of principles of natural justice.

12.4 As against this, the counsel for respondents attempted to justify their action by relying upon the instructions

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contained in Circular dated 24.01.2008 with regard to the procedure for dealing with DAR cases arising out of vigilance investigations. According to the clause 2.1.3 and 2.1.4 the decision of AA was sent for second stage advice of vigilance and on receipt of the same, the AA has passed final order and imposed major penalty vide order dated 27.06.2016.

13 Considering the aforesaid submissions of the parties, in our view the only question which requires to be decided is *Whether on receipt of second stage advice of the vigilance department, can the Appellate Authority, without notice to the CO, revise its own speaking order dated 19.02.2016 passed under Rule 22 of R.S. (D&A) Rules 1968 which was ordered to be duly communicated to the CO?*

14 It is appropriate to mention that while exercising his quasi judicial power, as Appellate Authority in course of deciding the appeal of the CO under provision of Rule 22 of Rules 1968, the AA considered the material on record and the responsibilities on the shoulders of the CO at this stage of life with due diligence to the offense proved by RUD, and came to the conclusion that the punishment imposed by D.A. was too harsh for a person. Hence the said A.A. decided vide its speaking order dated 19.02.2016 to reinstate the CO by reducing the major penalty of Removal from Service to minor penalty of Stoppage of increment for a period of two years without any future effect and transferred and posted the CO to a convenient and suitable place other than his last place of posting. For ready reference, the said speaking order dated 19.02.2016 passed by AA is reproduced as under:-

“Sub: Speaking order by Appellate Authority (A.A)-CMD, WR

*Ref: a) Major penalty case against Sh. Sanjay R Patil,
Ex.Pharmacist of BRC Division.*

*b) Hon'ble CAT, Ahmedabad's directives in OA 430/2015
dt. 14/12/2015.*

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Shri Sanjay R Patil (C.O.) while working as Pharmacist in BRC (P), Health Unit was imposed with major penalty of "Removal from Service" vide NIP dated 04.02.2015 in a vigilance case. He was appointed in Railways in March 1984.

The C.O. thereafter appealed within the time frame to A.A and requested for a personal hearing by CMD/WR(A.A) which was fixed on 15.09.2015. But having no response thereafter from the A.A., the CO approached Hon'ble CAT, Ahmedabad who thereafter directed Respondent no.2 i.e. CMD/WR to resolve the applicant's grievance with due diligence. Hence to provide a fair opportunity to the C.O., a fresh hearing was arranged by the A.A in his chamber on 18.01.2016 at Churchgate, WR HQ Mumbai, wherein the applicant (C.O.) and his Defence Counsel appeared and explained their grievances to the A.A. i.e. CMD/WR.

The procedures followed by the D.A (CMS/BRC) was quite exhaustive and conducted in a proper and right manner giving fair chance to the C.O. for defense. The remarks by CO in the case that he was falsely implicated is not tenable. His previous service records has not been considered while going through the present case as one such case is still subjudice against the C.O. in the Court of Law.

However, honouring the Hon'ble CAT, Ahmedabad's remarks regarding diminishing the livelihood of an individual, the quantum of responsibilities lying upon the shoulders of the C.O. at this stage of life and with due diligence to the offense proved by RUD, the undersigned as A.A do consider that the punishment imposed by D.A. was too harsh for a person. Hence the A.A. decides to reinstate and to reduce the penalty of "Removal from Service" of Shri Sanjay R Patil (C.O.) to a penalty of "Stoppage of increment for a period of two years without any future effects and transferring and posting him to a convenient and suitable place other than his list place of posting."

The verbatim order may be communicated with immediate effect, to the C.O.

The intervening period may be treated as "Leave due" as per para 1343, for which Sh. Sanjay R Patil may be instructed as per laid down establishment Rules.*

CMD/WR & A.A."

(underlined for highlighting the point)*

15 It is noticed that while exercising quasi judicial power, the AA recorded its finding by giving cogent reason for reducing the penalty and also made it clear that the said order/decision dated 19.02.2016 was required to be communicated to the CO. It can be seen that there is no whisper in the body of the said order that the same is a provisional order or it is to be implemented after consultation with vigilance department.

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16 However, the Dy CPO (HQ) for General Manager(E), Western Railway vide letter dated 24.02.2016 informed the DRM(E)/BRC that the competent authority, i.e. CMD has considered the appeal dated 09.03.2015 of the CO and passed the order in which he has reduced the penalty. (i.e. minor penalty). Since this is a vigilance case and orders of AA are in variation with vigilance advice of major penalty, CMD's order will be provisional and will require to be sent to vigilance for their advice. It is appropriate to reproduce the said communication dated 24.02.2016 which reads as under:-

"No.E/DAR/308/39/10/16(2015)

dt.24/02/2016

DRM(E)BRC

Sub: DAR case of N G Staff- Case of Shri Sanjay
R Patil, Ex. PHR-DB/BRC division.

Ref: Your office letter No.EC/161/308/27/5/BRC(169/13)
Dated 12/08/2015

XXXXXX

XXXXXX

XXXXXX

XXXXXX

The competent authority i.e. CMD has considered the appeal dt. 09/03/2015 submitted by Shri Sanjay R Patil and passed the orders in which he has reduced the penalty to that of "Stoppage of increment for a period of two years without any future effects" (i.e. minor penalty). Since this is a vigilance case and orders of Appellate Authority are in variation with vigilance advice of major penalty, CMD's orders will be provisional and will require to be sent to vigilance for their advice.

Hence, CMD's provisional orders are enclosed as Annexure 'A' and it is requested to take further action to consult Vigilance on this case. The outcome of the consultancy with Vigilance should be advised to this office in order to obtain CMD's final orders in this case.

Kindly depute an official to collect your office DAR file to facilitate the necessary action in the matter. Please treat this as URGENT so that the case can be processed for final orders.

*(Yatri Dave Vitekar)
Dy. CPO(HQ)
For General Manager(E)"*

17 On perusal of the record it can further be seen that pursuant to the said communication, the DRM(E)/BRC vide his letter dated 25.05.2016 sought advice from SDGM-CVO/CCG and in response to it vide communication dated 01.06.2016, the said

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Vigilance Department informed the DRM(E)/BRC which reads as under:-

“CONFIDENTIAL
No.E161/2011/06/057/C/V3/N/BRC dt.01st June, 2016.

To,
 DRM(E)/BRC

*Sub : DAR N.G.Staff-Shri S R Patil,PHR/BRC.
Ref : Your letter No.E/C/161/308/27/5/BRC (169/13)
Dated 25.5.2016.*

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With reference to above, it is informed that provisional decision of AA & CMD/CCG to “Stoppage of increment for a period of two years without future effects” against CO. is not acceptable as it does not commensurate with the gravity of offence and is not in line with vigilance advice.

As such, the AA may review his decision.

Action taken in the matter may please be advised to this office.

*(Ashok Kumar Sharma)
AVO(M)
For SDGM & CVO/CCG”*

18 Thereafter, as noted hereinabove, without affording any opportunity to the CO, the AA passed another order dated 27.06.2016 wherein he modified/reviewed his own order dated 19.02.2016 and enhanced the punishment from minor penalty to major penalty. The same is reproduced for ready reference as under:-

“No.E/DAR/308/39/10/16(2015) dt.27/06/2016

*To
Shri Sanjay R Patil,
Ex. PHR-DB/BRC*

(Through BRC division)
*SUB: DAR case of N G Staff-Case of Shri Sanjay
R Patil Ex. PHR-DB/BRC*
REF: Your Appeal dated 09/03/2016
Xxxxxxxxxx

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While working as Pharmacist in BRC (P), Health Unit, major penalty of Removal from service" was imposed upon you vide NIP dated 04.2.2015 in a vigilance case. You were appointed in Railways in March, 1984.

You had submitted as submitted an appeal within time frame to the Appellate Authority and requested for a personal hearing which was fixed on 15.9.2015. But having no response thereafter from the Appellate Authority you approached Hon'ble CAT-Ahmedabad who directed CMD to resolve your grievance with due diligence. Hence, to provide a fair opportunity to you, a fresh hearing was arranged on 18.1.2016 at Churchgate, WR, HQ Mumbai wherein you and your defence counsel appeared and explained your grievances.

The procedures followed by the DA was quite exhaustive and conducted in a proper manner giving fair chance to you for defence. Your remark that you were falsely implicated is not tenable. Your previous service record have not been considered while going through the present case as one such case is still subjudice against you in the Court of Law.

However, honouring the Hon'ble CAT-Ahmedabad's remarks regarding diminishing the livelihood of an individual, the quantum of responsibilities lying upon your shoulders at this stage of life and with due diligence to the offense proved by RUD, the undersigned as Appellate Authority do consider that the punishment imposed by DA was too harsh for a person. Hence, you are hereby reinstated with a penalty of "Reduction by two stages in the time scale for a period of two years with future effect"

**(S R Dhareshwar)
AA & CMD"**

19 It can be seen that initially the Appellate Authority had imposed penalty of "Reduction by two stages in the time scale for a period of two years without any future effect". However, as noted hereinabove, the decision dated 19.02.2016 of AA was not acceptable to the vigilance department as it was not commensurate in line with the vigilance first advice to impose major penalty. As per the instructions of GM, WR, the DRM sought the aforesaid second advice from vigilance department and compelled the AA to revised his earlier order dated 19.02.2016.

It can also be seen that in second order dated 27.06.2016, the AA had not whispered anything that his order dated 19.02.2016 was a provisional one and same is superseded by order

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dated 27.06.2016. Once the quasi judicial authority by its speaking order, decided the statutory appeal of the CO with its categorical observation, the said order requires to be communicated to the CO with immediate effect, the same clearly indicates the intention of the said AA to implement its order immediately. Undisputedly, in the present case the AA before revising its first order dated 19.02.2016, the AA has not issued any notice or afforded any opportunity to the CO/delinquent. In other words the impugned order 27.06.2016 has been passed behind the back of CO in utter violation of principles of natural justice.

Further, in compliance of AA's order dated 27.06.2016, the applicant was placed in the scale of pay of 9300-34800 (G.P. 4200/-) reducing his pay by two stages with immediate effect vide office order dated 27.9.2016 (Annexure A-16). The CO resumed his duty at transferred place on 30.07.2016. Thereafter, the same Appellate Authority issued another order dated 03.10.2016 to the effect that the intervening period from the date of CO's removal from service i.e. 04.02.2015 to the date of resumption i.e. 30.07.2016 shall be treated as period "**not spent on duty**" for all purposes and he will get 50% of Pay and Allowances, subject to fulfillment of other conditions. The CO was directed that if he desired, he could request to convert the said intervening period into leave of any kind due and admissible in terms of Rule 1343 of IREC, Vol. II. Subsequently, vide another order dated 15.03.2017 the CO was informed that the competent authority i.e. CMD has ordered to treated the intervening period from removal to reinstatement (i.e. 04.02.2015 to 30.06.2016) as "**Leave Due**"

20 At this stage, it is also required to mention that AA, has considered charges leveled against him about failure to obtain approval from Sr. DMO while issuing the medicine from the store of the Health Unit and the entries in the medicine register were not tallied and thereby he failed to maintain proper account of medicine and

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consequently in view of the gravity of misconduct, it was deemed fit by the AA to reduce the major penalty of Removal from Service into minor penalty vide order dated 19.02.2016 for which as noted hereinabove, cogent reason has been stated in the said order. At this stage, it is apt to mention that, only after disagreement of vigilance department in its second advice, the said order of minor penalty passed by AA was changed to major penalty vide impugned decision dated 27.06.2016 which was done without notice to the CO. In our considered view, the said decision 27.06.2016 suffers from infirmity as it has been issued in violation of principles of natural justice. The Hon'ble Apex Court in the case of Union of India & Ors v/s R P Singh reported in (2014) 7 SCC 340 held that the furnishing of copy of the report of advice is mandatory. In the present case, as noted hereinabove, undisputedly, the revised impugned order dated 27.06.2016 has been issued based on second advice of Vigilance Department and the said second advice was not furnished to the CO. The impugned order has been passed behind the back of the CO, without affording any opportunity to meet with the second advice and intention to revise the minor punishment into major punishment. Therefore, we have no hesitation to hold that the respondents committed procedural irregularity in revising its own order dated 19.02.2016 as also acted in violation of principles of natural justice in decision making process of issuance of impugned order dated 27.06.2016.

At this stage, we also take notice of the fact that the CO had only two years service left when his appeal was decided by the AA vide order dated 19.02.2016. It is also required to mention that during the pendency of this OA, the CO retired from service and unfortunately expired before decision on the OA. The widow of CO i.e. Smt. Shalini R Patil has been taken on record as legal heir in the present case.

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- 21** In view of above factual matrix, considering the overall facts and circumstances as narrated hereinabove, we have no hesitation to hold that the said AA should not have passed the revised order dated 27.06.2016 of enhancement of punishment without notice to the CO and without canceling his first order dated 19.02.2016; the said decision dated 27.06.2016 is not tenable being in violation of principles of natural justice. This answers our question posed above.
- 22** In view of above discussion, we are of the opinion that the impugned order dated 27.06.2016 passed by Appellate Authority suffers from infirmities and deserves to be quashed and set aside. Accordingly, impugned order dated 27.06.2016 (Annexure A/15) is quashed and set aside.
- 23** In consequence to above finding, the respondents are directed to give effect to Appellate Authority's order dated 19.02.2016 and re-calculate the consequential benefits including difference in retrial dues and same be paid to the widow of the CO i.e. Smt. Shalini R Patil as expeditiously as possible but not later than four months from the date of receipt of copy of this order.

Accordingly OA is partly allowed with the aforesaid directions. There shall be no orders as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

Nk/abp

