CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

No. OA 1085 of 2014

Present: Hon'ble Mr. Anirban Mukhopadhaya, Administrative Member
Hon'ble Mr.Swarup Kumar Mishra, Judicial Member

Sri Mukunda Behera, aged about 60 years, Son of Govinda Behera, Resident of Barchhara, PO Jatni, Dist - Khurda.

……Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, DistKhurda.
2. The Senior Divisional Engineer (Co-ordination), East Coast Railway, At/PO Jatani, DistKhurda.
3. The Additional Divisional Railway Manager, East Coast Railway, At/PO Jatni, Dist – Khurda.

……Respondents

For the applicant : Mr. S. S. Das, counsel

For the respondents: Mr. S. K. Ojha, counsel

Heard & reserved on :08.04.2021 Order on :07.07.2021

O R D E R

Per Mr. Swarup Kumar Mishra, J.M.

This is second round of litigation. The applicant had approached this Tribunal earlier in OA No. 154/2007 challenging the order of punishment. This Tribunal vide order dated 23.03.2011 had directed for reinstatement of the applicant in service and directed the respondents to proceed with de novo enquiry. Thereafter the respondents conducted de novo inquiry and inquiry report was submitted on 27.08.2013 holding the charges against the applicant as proved. The Disciplinary Authority then imposed punishment of recovery of Rs. 2,50,000/- vide order dated 23.09.2013. The appeal of the applicant was rejected by the appellate authority and the punishment imposed by the disciplinary authority was upheld. The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

1. *Quash the enquiry report, punishment notice and order of appellate authority as annexed under Annexure A/4, A/6 and A/8 respectively in order to exonerate the applicant from the charges levelled against him in Annexure A/1 and*
2. *Further be pleased to pass any order appropriate order (s) as this Hon'ble Tribunal deems fit and proper for the sake of natural justices.*

2. The applicant had inter alia pleaded in the OA that while he was working as O.S. Gr. II under Respondent No. 2 vide memo dated 20.12.1995 he received a charge sheet for manipulation of official records and after enquiry he was charged with major penalty and was dismissed from service w.e.f. 01.02.2006. He had approached this Tribunal in OA No. 154/2007 which was disposed of on 23.03.2011 with observation to reinstate the applicant and proceed with enquiry from the stage of appointment of enquiry officer. The applicant joined in service in December 2012. Thereafter inquiry was started against the applicant vide letter dated 23.05.2013. The applicant submitted that without considering the questionnaires in Annexure A/2 and A/3 regarding involvement of other officials, the IO held the applicant being in charge fo the store and accountable. The applicant submitted that the enquiry officer did not care to examine the signature by any handwriting expert and more to say that no one has identified that the writing was of the applicant. The applicant submitted that without following the principle of natural justice Respondent No. 2 issued the punishment notice dated 23.09.2013 which is illegal. The applicant submitted that he had applied for some information under RTI Act but same was not supplied on some pretext. The applicant submitted that Respondent No. 3 also disposed of his appeal without applying his mind and imposed the punishment of recovery of amount of Rs. 2,50,000/- which is illegal. Hence the OA.

3. The respondents in their counter inter alia averred that after following the due process of inquiry and giving opportunity to the applicant to defend himself, the charges against the applicant was proved and punishment was imposed on him. The applicant's appeal was also considered by the appellate

authority and after due consideration it was upheld. The respondents further submitted that the OA is not maintainable since the applicant has not exhausted the remedies available under the statute of approaching the revisional authority.

4. Heard learned counsel for both the sides and have carefully gone through the material on records. It was contended on behalf of the applicant by his learned counsel that the specific stock verification of the materials on question was made in his absence without giving any opportunity to the applicant to be present at that time. It is seen that during the relevant period when the stock verification was made the applicant was under suspension. It has been contended by the respondents that as per Railway Board letter dated 06.10.1986, if an employee has to be placed under suspension immediately and it is not considered desirable or it is not possible to associate him in stock taking, the charge should be taken over by the subordinate deputed to look after the job duly witnessed by two members of staff, who should be of the same status or of a status higher than the suspended employee, in addition, a gazette officer should also be associated in such stock taking. The stock verification was made by senior officer in presence of two witnesses and a gazette officer was also present.

5. So far as charge No.1 is concerned it has been alleged that the applicant has made some manipulation in the official ledger with regard to the stock by mentioning that 50000 nos. of metal liner has been transferred to page no. 278 although it was not transferred. In this regard learned counsel for the applicant has submitted that there is no evidence whatsoever to show that the applicant had made any manipulation in the ledger in question. He has also drawn attention of this Tribunal to the statement given by PW 2 claiming that he has expressed his inability to give any opinion as to whether the hand writing appearing in the ledger in question is that of the applicant or not, as the said witness has retired since long and he could not remember about it. It was also submitted on behalf of the applicant that there is no categorical and clear mentioning either by the IO or by the DA as to which documents were

gone through by them in order to ascertain that the handwriting appearing in the ledger in question is that of the applicant as compared with the admitted handwriting of the applicant in any correspondence. The description and identity of these documents sought to be the past correspondences of the applicant, as relied upon by the IO and DA has not been mentioned anywhere. Therefore in the circumstances the applicant's counsel has submitted that the findings that the applicant has made the manipulation in question is merely conjectures and surmises and the same is based on no evidence. It is seen that no step has been taken by the department or by the applicant for examination of the said disputed handwriting in the ledger in question by any handwriting expert.

6. Learned counsel for the applicant further submitted that finding with regard to the misappropriation/missing of 50 thousand metal liners is not based on any categorical finding by the concerned authority to come to the said conclusion against the applicant. Learned counsel for the applicant has drawn the attention of this Tribunal to Annexure A/3, the defence statement of the applicant in this regard. He had also submitted that the so-called manipulation in the ledger could not have been relied upon by the authority solely for the purpose of coming to the conclusion that the applicant and none else has misappropriated the articles in question. In this regard he has also submitted that although 54 thousand of number of metal liners were found to be missing, it is not known that on what basis the authorities came to the conclusion that the applicant is responsible for missing of 50 thousand metal liners out of 54 thousand.

7. Learned counsel for the applicant while drawing attention of this Tribunal to the memorandum of charges and the order passed by the Appellate Authority has submitted that the Appellate Authority has not applied his mind while passing the order in question and had not considered the specific grounds taken by the applicant in the memorandum of appeal.

8. On the other hand learned counsel for the respondents has submitted that the applicant had failed to take any clear and categorical stand before the IO and in the show cause filed by him in response to the charge memo issued against him that he had not made any such entry in the ledger in question with regard to the stock although specifically charge of manipulation is made against him. To counter, learned counsel for the applicant has submitted that the applicant has not admitted his fault and the language in which he has submitted the show cause after receiving the charge memo and in his final defence statement given before the DA vide Annexure A/3 show that he has denied about the said aspect regarding manipulation of ledger by him.

9. Learned counsel for the respondents has drawn attention of this Tribunal to pg 23 sub para (5) that the applicant had not specifically denied the same and tried to explain that due to oversight the stock shown in one page of the ledger could not be transferred to another page. He has also drawn attention of this Tribunal to pg 30 of the reply given by the applicant to the charge memo wherein the applicant has mentioned that it was due to oversight. Although one ground was taken on behalf of the applicant before this Tribunal that the applicant was not given any chance to recognize the signature appearing in the ledger in question is actually his signature or not, learned counsel for the respondents submitted that this point was not taken before the IO and DA.

10. Learned counsel for the applicant has submitted that the articles in question were kept in unkept and scattered manner and therefore the stock verification has not been properly done by taking due care and following due procedure. He also submitted that the finding given by the DA that the statement of defence of the applicant is not convincing and no genuine ground has been taken and is not supported by any reason or material.

11. We are well aware of the limited scope of Tribunal interference in the disciplinary proceedings. However In the case of Allahabad Bank v. Krishna Narayan Tewari, (2017) 2 SCC 308 the Hon'ble Supreme Court has held as under:-

> ***"7. We have given our anxious consideration to the submissions at the Bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a departmental authority on the basis of evidence available on record. But it is equally true that in a case where the disciplinary authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty-bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the disciplinary authority and the appellate authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the disciplinary authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the appellate authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the disciplinary authority. All told, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the disciplinary authority and the appellate authority."***

12. In the instant case there is no mention by the IO or by DA that they are acquainted with the hand writing of the applicant. Therefore it is surprising as to how they have given finding that after going through the past correspondences of the applicant, the IO could know that the applicant has made the said manipulation in the ledger in question. There is no evidence of video recording. The article of charges are said to be proved based on the report of IO that the signatures are of the applicant. The IO could have used the help of handwriting expert to come up with the conclusion regarding that. That not being done, and the applicant's claim that those are his not signature and neither any witnesses conforming to that, we feel that the applicant has been prejudiced on that basis and principle of natural justice has been violated. Accordingly, we remand back the matter to the Disciplinary Authority/Competent Authority to conduct a fresh enquiry in accordance with law and examine the handwriting in question through one handwriting expert to arrive at a conclusion. Accordingly the impugned order dated 23.09.2013 (Annexure A/6) and 06.06.2014 (Annexure A/8) are quashed and we remand

back the matter and the entire exercise is to be completed within a period of three months from the date of receipt of this order

14. The OA is accordingly disposed of but in the circumstances without any order as to cost.

(Swarup Kumar Mishra)
Member (J)

(A. Mukhopadhaya)
Member (A)

(csk)