

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**



No. O.A. 350/00101/2018

Date of order: 12<sup>th</sup> February 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Apurba Roy,  
Son of Late Sunil Chandra Roy,  
Aged about 37 years,  
By Occupation - Service,  
Working as - Junior Engineer (JE) / Signal /  
Fakiragram / N.F. Railway,  
Having permanent residential address at  
Chaltokala Ward No. - 4,  
P.O. + P.S. + Dist. - Kokrajhar,  
Assam - 783370,  
At present residing at - Rly. Qr. No. - 84B,  
B.G. Colony,  
Fakiragram, P.O. + P.S. - Fakiragram,  
Dist. - Kokrajhar,  
Assam,  
Pin - 783345.

.... Applicant

- V E R S U S -

1. Union of India,  
Through the General Manager,  
Northeast Frontier Railway,  
Maligaon,  
Guwahati - 11,  
Assam - 781 011.
2. The Chief Personnel Officer,  
Northeast Frontier Railway,  
Maligaon,  
Guwahati - 11,  
Assam - 781 011.
3. The Additional Divisional Railway Manager,  
Alipurduar Junction Division,  
N.F. Railway,

Being the Appellate Authority,  
Alipurduar,  
P.O. + P.S. + Dist. - Alipurduar - 736123.

4. The Divisional Railway Manager,  
Alipurduar Junction Division,  
N.F. Railway,  
Alipurduar,  
P.O. + P.S. + Dist. - Alipurduar - 736123.
5. The Sr. Divisional Signal & Telecom Engineer,  
Alipurduar Junction Division,  
N.F. Railway,  
Being the Disciplinary authority, Alipurduar,  
P.O. + P.S. + Dist. - Alipurduar - 736123.
6. The Sr. Divisional Personnel Officer & Incharge,  
Alipurduar Junction Division,  
N.F. Railway,  
Alipurduar,  
P.O. + P.S. + Dist. - Alipurduar - 736123.

.. Respondents

For the Applicant : Mr. K. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

### O R D E R

#### Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with his order of penalty, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(A) Issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and/or withdraw the purported order of the disciplinary authority dated 7.6.2016 and not give any effect or effects to the same or allowing Appeal pending before the Appellate authority till date and regularize the Service Book of the applicant forthwith properly by expunging the punishment imposed and



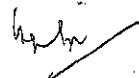
inflicted on the applicant in terms of the order of the disciplinary authority if any recorded in his service book in the meantime;

- (B) Do issue further mandate or mandates, order or orders, directions on the respondents, their men and agents and each of them to pass an appropriate order for Extension of the Panel of the ASTE Gr. -B which was approved by the General Manager (P), N.F. Rly on 29.6.2016 vide No. E/254/14/pt.vii/LDCE(O) dt. 19.7.2016 of GM (P)/MLG so that ASTE Gr-B promotion will not hamper in any manner whatsoever;
- (C) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers in connection with the instant lis before this Ld. Tribunal for kind perusal and on such kind perusal do conscientiable justice to the applicant;
- (D) Grant cost of this proceeding in favour of the applicant;
- (E) Pass such other or further order or orders, direction or directions, mandate or mandates as may appear to be fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. The applicant has filed a supplementary application and Ld. Counsel for the applicant has also submitted his written notes of arguments.

3. Ld. Counsel for the applicant would submit that the applicant, who was working as Jr. Engineer/Signal/Fakiragram with the respondent authorities, had participated in the selection process for the post of Assistant Signal & Telecom Engineer (ASTE-Gr.-B) on 23.2.2013. The applicant was declared unsuccessful in the said selection process.

After the selection process, the applicant was directed to appear before the Chief Vigilance Officer, and, about two years thereafter, he was served with a Memorandum of charges dated 19.5.2015. Although the applicant had approached the disciplinary authority for supply of



certain Relied Upon Documents, all RUDs were not furnished to him but a Sr. Enquiry Officer was appointed to enquire into the allegations leveled against the applicant.

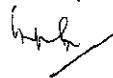
After the enquiry proceedings were concluded, the Sr. Enquiry Officer submitted his report to the disciplinary authority with the conclusion that Article I of the charges have not been proved.

The disciplinary authority, however, was not satisfied with the said enquiry report and issued his disagreement note dated 17.5.2016 (Annexure A-9 to the O.A.) to the applicant. The applicant objected to the same but the disciplinary authority concluded the proceedings after penalizing him vide his orders dated 7.6.2016 (Annexure A-11 to the O.A.) with the following penalty:-

**“Reduction in 2 stage for 3 years with immediate & cumulative effect.”**

The applicant had preferred an appeal on 30.7.2016 (Annexure A-12 to the O.A.) and had followed up with two reminders thereupon but till the date of filing of the Original Application, namely, 9.1.2018, such appeal had remained pending and one of the applicant's prayers was to allow the appeal pending before the appellate authority.

That, thereafter, the appellate authority issued a notice on 29.1.2018 in which he had proposed to enhance the penalty under Rule 22(2) of RS (DA) Rules and had called for the explanation of the applicant/appellant on certain queries that the appellate authority raised in the said memorandum. The applicant, thereafter, rushed to the Tribunal seeking stay of such memorandum in which the penalty was



proposed to be enhanced and this Tribunal issued the following interim orders:-

"The impugned notice dated 29.1.2018 of the appellate authority shall not be acted upon to the prejudice of the applicant till the disposal of O.A. No. 101/2018. At the same time, the applicant is also granted liberty to respond to the notice as it has been issued in response to his appeal dated 30.7.2016."

4. In his Original Application, the applicant had primarily advanced the following grounds in support of his claim for relief:-

- (a) That, the appellate authority ought to have passed his judicious order on the appeal of the applicant within the time limit and the inaction of the appellate authority was illegal.
- (b) The disciplinary authority had failed to supply all the documents as requested for by the applicant causing prejudice to the applicant.
- (c) The disciplinary authority failed to place on record any valid reason for disagreeing with the enquiry report.
- (d) While the disciplinary authority relied on many witnesses in his disagreement report, the charge memorandum had enlisted only one witness, namely, Shri Dilip Kumar Sharma, SSE/Tele/HQ/RNY (PW-1) in Annexure IV to the charge memorandum.
- (e) That, the disciplinary authority failed to correctly evaluate the deposition as well as the cross examination of the applicant with respect to witness, Shri Dilip Kumar Sharma, and had arrived at an erroneous conclusion.

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5. Ld. Counsel for the applicant, however, would very fairly submit that the applicant had passed the LDCE examination of ASTE Gr. 'B' on 29.2.2016, was empanelled thereafter, and, that, an order dated 18.7.2019 was issued in favour of the applicant for promotion to the post of SSE/Sig after expiry of his penalty of "reduction in 2 stages for three years w.e.f. 7.6.2017 to 6.6.2019."

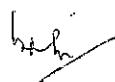
That, on 24.7.2019, his promotion to the post of SSE/Sig in Level 7 was further confirmed, and, vide Office Order dated 16.3.2020, the applicant was finally promoted to the post of ASTE Gr. 'B'. Documents to the above effect were furnished by the Ld. Counsel for the applicant during hearing.

The applicant's primary grievance at this stage is that the penalty order which has subjected him to severe financial loss should be quashed.

6. The respondents, per contra, would argue as under:-

That, the applicant was first appointed as Electrical Signal Maintainer (ESM) Gr. -II on 19.8.2002, was promoted to the post of JE on 14.12.2007 and posted at Fakiragram on 23.2.2013. He appeared for selection of ASTE Gr. 'B" against 30% LDCE quota vacancies.

In the said examination, a preventive check conducted by Zonal Department of the Railways revealed that some candidates had resorted to malpractice in the form of copying in the LDCE examination. In particular, the applicant's answer scripts revealed that answers to six questions of Paper I and seven questions of Paper II were identical to those of one Dilip Kumar Sharma, another examinee to the LDCE



examination. On this ground, the applicant was issued with a charge memorandum alleging malpractice of copying in the written examination.

According to the respondents, the post of ASTE is a safety related post, and, hence, it was all the more important that sincere and honest persons are selected for the post. Candidates who attempt to be selected through unfair means are not trustworthy or responsible enough. Hence, they cannot be depended upon to ensure safety measures towards safe running of trains and prevention of accidents.

That, although the Sr. Enquiry Officer had concluded that Article I of the charges were not proved, the disciplinary authority had disagreed with the said enquiry report primarily on the following grounds:-

- (i) It is quite common to detect similarity in correct answers. Identical mistakes, however, are naturally suspect as such common mistakes can only occur while copying from another examinee.
- (ii) The enquiry officer did not check the answers written in the book of Shri Jyotirmoy Roy, Professor IRISSET/Secunderabad whose book is followed by almost all S&T Supervisors in similar type of technical competitive examination.
- (iii) The answer papers of the applicant as well as the lone witness at Annexure A-IV of the memorandum reveal that there was word by word similarity in answering the descriptive questions.
- (iv) The applicant and the witness Mr. Dilip Kumar Sharma had followed the same structured format in their reply, namely, manually inserting headings/sub-headings to the answers to

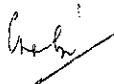
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each questions, repeating question numbers twice in a similar manner, adopting the identical serials of Roman numbers, and using the alphabetic numerals for heading and roman numbers in subsequent sub-headings. Further, chronology of questions answered are also identical in both answer scripts.

(v) Both answer scripts reveal the same spelling mistake and identical word to word wrong answers. Both examinees have omitted certain words which were required to complete the answers. Their common but incorrect answers in both answer scripts cannot be traced to any standard reference book or in any prescribed manuals. They have both used unusual terminologies not found in standard texts/manuals.

Accordingly, the disciplinary authority disagreed with the findings of the enquiry officer and furnished his disagreement note. After receiving the representation of the applicant thereupon, the authority penalized him vide his orders dated 7.6.2016 with a penalty of **“Reduction in 2 stage for 3 years with immediate & cumulative effect.”**

7. The disciplinary authority, while penalizing the applicant vide his orders dated 7.6.2016 (Annexure A-11 to the O.A.) had also noted that he could prefer his appeal within 45 days to the next immediate superior. The applicant appealed according on 30.7.2016 (Annexure A-12 to the O.A.). The applicant/ appellant had based his appeal on the answers provided in his answer script, claimed that the answers submitted by him should entirely be credited to him and also alleging that Shri Dilip



Kumar Sharma, who was also part of the alleged malpractice, had obtained higher marks and was declared as "passed" in the written test.

It is noted herein that Shri Dilip Kumar Sharma has not been impleaded as a private respondent by the applicant.

8. We next examine the memorandum of the appellate authority which has been annexed in the supplementary application by the applicant. The said memorandum reads as follows:-

"  
N.F. Railway

Office of the  
Divisional Railway Manager  
Alipurduar Junction

No. S&T/SS/3/Vig./Pt. III/Loose

Dated : 29.1.2018

To  
Shri Apurba Roy,  
JE/Signal/FKM

(Through: Sr. DSTE/APDJ, The Disciplinary Authority)

Sub: Major Memorandum Charge sheet (i.e. Standard Form No. 5)  
against Shri Apurba Roy, JE/Sig./FKM, dated 08.05.2015.

Ref: Your appeal dated 30.07.2016, addressed to ADRM/APDJ, the Appellate Authority (AA) received through Sr.DSTE/APDJ, the Disciplinary Authority (DA).

Your appeal received through Sr.DSTE/APDJ (DA), the NIP and all other relevant documents have been gone through by the undersigned.

1.0 On going through your case, it is revealed that at **Paragraph- 4, 7, 8, 9, 11, 12 & 13 of your appeal**, you have yourself admitted that many of the answers given by you are similar to those given by **Shri Dilip Kumar Sharma, SSE/Tele/RNY**.

2.1 You are hereby requested to please mention the **reason(s)** for existence of **similarity** in the answers given by you (which you have yourself admitted) with those of Shri Dilip Kumar Sharma, SSE/Tele/RNY.

3.0 At Paragraph-1 (at page-2) of your above referred appeal, you have written that : *In my answer sheet, I have written almost all the questions answer serially right from the beginning as asked to write in the question paper of both Paper-I & Paper-II, which is not practicable during the case of malpractices.*

3.1 But, actually in Paper-II, all answers have not been given by you serially hence, you are hereby requested to please mention the reason(s) for not answering serially all the questions in Paper-II.

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4.0 Vide your above referred reply you have not given specific para-wise & point wise reply to the NIP dated 07.06.2016.

4.1 You are hereby requested to give specific para-wise & point wise reply to the NIP dated 07.06.2016.

5.0 As the punishment imposed by the DA, appears to be grossly inadequate as compared to the gravity of the charges hence, being the Appellate Authority, I, the undersigned propose to enhance the penalty under Rule 22(2) of RS (D&A) Rules.

6.0 Submit your representation, if you wish to make against the proposal for enhancement of penalty, to the undersigned within 15 days from the date of receipt of this notice.

6.1 If no reply is received within the prescribed time, enhanced penalty will be imposed without any further notice.

**Signature**  
**Name Abhay Kr. Pandey**  
**Designation Appellate Authority &**  
**ADRM/APDJ**

Copy to:-

Sr. DSTE/APDJ (The Disciplinary Authority) - for information & necessary action please."

We find upon scrutiny of the said memorandum that the appellate authority has mostly confined himself to the issues raised by the applicant/appellant in his appeal in the details of answers provided in his answer script vis-à-vis Dilip Kumar Sharma. The appellate authority has also opined that the applicant/appellant had himself admitted that many of the answers given by him were similar to Mr. Dilip Kumar Sharma, SSE/Tele/RNY. The appellate authority had, thereafter, asked the applicant to explain the specific similarity between two answer scripts based on submissions made in his appeal at Annexure A-12 to the O.A. The appellate authority also proposed to enhance the penalty imposed under Rule 22 of RS (DA) Rules, 1965.

This memorandum of the appellate authority has been primarily challenged by the applicant in the supplementary application on grounds

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of delay. Ld. Counsel for the applicant would refer to the model time schedule for finalising disciplinary proceedings (Annexure A-16 to the Supplementary Application) as laid down in Railway Board's letter No. E(D&A)69RG 6-17 dated 8.1.1971 and would argue that the delay in disposing of the appeal being severely time barred, the applicant's appeal should be allowed in course of judicial review.

Board's letters No. E(D&A)78/RG 6-11 dated 3/3/78 and No. E(D&A)71/RG6-22 dated 11.6.71 as provided in RSDA digest (10<sup>th</sup> Edition) states that the appellate authority should give high priority to dispose of the appeal, and, as far as possible, an appeal should be disposed of within one month. It is also held that if the appellate authority proposes to enhance the penalty, a notice has to be given to the charged employee allowing him to represent against the enhancement, an order should be passed only after considering the representation.

In this context, because the appellate authority had proposed to enhance the penalty, he had issued a notice to the charged employee allowing him to represent against the proposed enhancement. Admittedly, there was a delay in the issue of notice by the appellate authority and no grounds have been set out to explain the reason as to why the delay has occurred. We note, however, that the Board's letter dated 11.6.71 (supra) uses the phrase "**as far as possible**" and the time limit has not been made absolute. We also note in the Railway Board's letter dated 8.1.71 (supra) as referred to by the Ld. Counsel for the applicant, the said letter refers to "**Model time-schedule**" for finalizing disciplinary proceedings without any specific mandate on the appellate authority.

*[Handwritten signature]*

The Model time-schedule for finalizing departmental proceedings in case of imposition of major penalty as laid down by the letter dated 8.1.1971 (supra) has laid down a total of 150 days and the last milestone is attributed to the disciplinary authority who is to finally decide on the imposition of penalty. No time line has been laid down in the said model time schedule for decision making of the appellate authority.

It is trite that if the applicant is denied his rights to appeal or if the appellate authority is prevented from passing appellate orders, the orders of the disciplinary authority would become absolute.

It has also been held in **Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84** that disciplinary proceedings stands concluded with the decision of the disciplinary authority.

In **G. Anandam v. Tamil Nadu Electricity Board, (1996) II LLJ 1198 (Mad.)** it was ruled that mere delay alone is not sufficient to vitiate the disciplinary proceedings, and, that, it is necessary for the delinquent employee to say that mere prejudice has been caused to him on account of such delay. It is not the applicant's case that the disciplinary proceedings suffer from delay or latches and should be struck down on that ground alone. The applicant has on the other hand, assailed the orders of the disciplinary authority on grounds of procedural irregularities and was at liberty to raise such grounds in his appeal.

In the instant matter, the applicant himself has sought to stay the notice of the appellate authority. Upon the stay of implementation of such notice, the applicant suffered the penalty during the period 7.6.2017 to 6.6.2019.

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9. We are guided by the Hon'ble Apex Court in that, in judicial review, the Court cannot decide on the quantum of punishment imposed on a delinquent employee and such relief must come from the authorities who are delegated such power of statutory appeal and revision under the rules.

A Three Judge Bench judgment of the Supreme Court, while considering the question as to whether the High Courts, could, in exercise of their powers of judicial review, interfere with the punishment imposed by a disciplinary authority have directed as follows in **Indian Oil Corporation Ltd. v. Ashok Kumar Arora, JT 1997 (2) SC 367**:

"At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topics and it is not necessary to refer to all these decisions. Suffice it to refer to few decisions of this Court on this topic viz., State of A.P. v. S. Sree Rama Rao 1963 (3) SCR 25, State of A.P. v. Chitra Venkata Rao, 1976 (1) SCR 521, Corporation of City of Nagpur v. Ramachandra and Nelson Motis v. Union of India, JT 1992 (5) SC 511.

In **Union of India v. B.K. Srivastava, JT 1997 (8) SC 573** it has been held that:

"the court or Tribunal in exercise of its powers of judicial review cannot sit as a Court of appeal and interfere with the punishment by reassessing the evidence on its own."

10. In **Ram Niwas Bansal v. State Bank of Patiala, 1998 (4) SLR 711** a Full Bench of Punjab & Haryana High Court has held that the appellate authority has to keep in mind three factors when an appeal is preferred to such authority:-

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- "(a) There should be proper application of mind and scrutiny of the records before it by the appellate authority to enable it to record its satisfaction in terms of the rules.
- (b) It would pass a speaking order which would at least *prima facie* show that the authority concerned has applied its mind to the various contentions or points or determination raised before it. Further that it has particularly examined whether the penalty imposed is excessive and/or inadequate.
- (c) The scope of applicability of the maxim *Audi Alterem Partem* before the appellate authority depending upon the language of relevant regulation/rule.

Board's letter No. E(D&A) 78/RG 6-11 dated 3.3.1978 (RSDA digest, 10<sup>th</sup> Edition) also mandates that appellate authority has to consider three main aspects viz.

- "(i) Whether the procedure was followed correctly and there has been no failure of justice;
- (ii) Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and
- (iii) Whether the quantum of penalty imposed is commensurate to the gravity of offence.

After consider the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The orders of the Appellate Authority should be signed by the authority himself and not on his behalf."

In the instant matter, as the applicant seeks quashing of his penalty orders imposed by the Disciplinary Authority, we would refrain from acting as a Court of appeal and would remit the matter back to the Appellate Authority. The Appellate Authority should consider the applicant/appellant's response dated 9.7.2018 (as annexed in the written notes of arguments of his Ld. Counsel), in accordance with law, and issue a reasoned and speaking order, particularly, bearing in mind the ratio in ***Ram Niwas Bansal (supra)***. As the decision on the appeal has already been delayed, such appellate orders should be passed within 4 weeks from the date of receipt of a copy of this order.

*W.P.*

In the event the appellate authority's orders allow the appeal of the applicant/appellant, consequent actions may be taken to provide relief to the applicant within a period of 16 weeks thereafter.

11. With these directions, the O.A. is disposed of. No costs.

**(Dr. Nandita Chatterjee)  
Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

SP