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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.608/2000

Cuttack, this the 4th day of Nov. 2004

D.Kalidas

.....

Applicant

Vrs.

Union of India & Others
Respondents

FOR INSTRUCTIONS

(1) Whether it be referred to the Reporters or not ? 17/11/04

(2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 17/11/04


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

D.Kalidas, working as Asst.Driver, South Eastern Railway, Tata Nagar,
Chakradharpur Applicant

Advocate for the applicant - Mr.S.C.Samantray

Vrs.

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Senior Divisional Electrical Engineer (O.P.), S.E.Railway, Chakradharpur.
3. Divisional Railway Manager, South Eastern Railway, Chakradharpur

..... Respondents.

Advocate for the Respondents - Mr.S.R.Pattnaik

SHRI B.N.SOM, VICE-CHAIRMAN

1. This Original Application has been filed by Shri D.Kalidas, formerly Assistant Driver, S.E.Railway, Tata Nagar, challenging the order dated 19.4.1996, modified on 29.7.1996, reinstating him as Assistant Driver in the initial grade with loss of seniority.
2. The case of the applicant is that after 22 years of service, on 28.5.1995 when he was working as Chief Crew Controller(Electrical), Tata, there was a night inspection at Adityapur Railway Station, when it was alleged by the

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Inspection Party that he was on duty under influence of liquor. Although the applicant, at the time of inspection, stated that he had taken medicines, he was placed under suspension with effect from 26.8.1995, followed by issuing of charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, dated 6.10.1995. After holding an enquiry, the disciplinary authority imposed on him the punishment of removal from service, vide his order dated 19.4.1996 (Annexure 4). Against this order, the applicant filed an appeal to the Divisional Railway Manager, Chakradharpur, who modified the punishment order as follows:

"The applicant may be reinstated as Assistant Driver in initial grade with loss of seniority. This is to give him another chance."

Being aggrieved by this order, the applicant has approached the Tribunal seeking the following reliefs:

- a) To set aside the order of punishment dt. 19.4.96 and 29.7.96.
 - b) The applicant be paid the salary for the period of suspension i.e. 26.8.95 to 23.4.96 and period during pendency of appeal and salary from 23.4.96 to 28.7.96."
3. The Respondents have filed counter affidavit. The facts of the case are admitted. Dwelling on the allegation that he had taken alcohol while on duty, the Respondents have submitted that the inspection party had subjected him to breathalyzer test and confirmed that he had consumed liquor. It is on this ground that he was put under suspension and he was also charge-sheeted. The applicant had produced a medical certificate dated 22.8.1995 from a private medical practitioner who had advised him to take medicated brandy. The enquiry officer had taken this into account, but had found the allegation against the applicant proved whereupon the disciplinary authority by his order

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dated 19.4.1996 removed him from service. The appellate authority reinstated him to give him an opportunity to redeem himself. They have submitted that the applicant was given full opportunity to defend his case. They have also submitted, referring to GR 2.09, that no railway servant, while on duty in connection with working of trains, should be in a state of intoxication or should be in a state of having taken or used any alcoholic drinks, addictive, narcotics or stimulant drug or preparation, which may impair his capacity to perform his duty. It further states that even within 8 hours before the commencement of his duty, railway servant would not consume the above items. Even consumption of medicated brandy during duty hours or within eight hours from the commencement of duty is in violation of GR 2.09. They have ~~also~~ denied that the applicant is entitled to full salary during the period of suspension as the disciplinary proceedings resulted in imposition of a major penalty.

4. We have heard the learned counsel for both the parties and have perused the records placed before us. It is well settled that judicial review, generally speaking, is not directed against a decision but is directed against the decision making process. Court/Tribunal does not act as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. The law regarding scope of judicial intervention has been laid down in

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the case of *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484 and we quote the same as follows:

“Judicial Review is not an appeal from a decision, but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that findings must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

5 . In this Original Application as also during oral arguments, the applicant has drawn our notice to the fact that the order of the appellate authority has been fatal to his career as it has reduced him to the initial stage of his grade thereby erasing 9 years of his service. He has argued that the report of the Enquiry Officer to the extent that “from his appearance it is clear that he is an

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alcoholic man so he is found to be guilty of taking alcoholic during on duty" is based on no evidence. The Enquiry Officer cannot substitute evidence by his own knowledge. Secondly, during the enquiry (which he had admitted in his report), none of the witnesses examined confirmed that the applicant was under influence of liquor. The Enquiry Officer has also not taken into account the fact that contrary to the instruction issued by the Railway Board, before leveling the allegation of being in a state of intoxication while on duty, the authorities did not subject him to medical test. In support of his argument, he has submitted a copy of the Railway Board's letter dated 23.10.1969 (Annexure 7). As the enquiry report was based on no evidence, the disciplinary authority could not have, depending on the enquiry report, passed the order dated 19.7.1996. He has further submitted that although the appellate authority in his order dated 29.7.1996 stated that he was giving the applicant another chance to improve himself, but the effect of that order brings him down in the initial grade with loss of seniority has far-reaching implications. His pension is jeopardized by this order. The applicant has further submitted that by his letter at Annexure 3 he had approached the Senior Divisional Electrical Engineer (OP), Chakradharpur that after the incident he had consulted his doctor, explained the above incident and requested him to change the medicine (Brandy) which he had prescribed for him as there is restriction for consumption of even medicated Brandy for the running staff in the Railway. The Doctor had accordingly changed his

prescription. His grievance is that this submission of his has not been taken into account by the appellate authority before passing his order.

6. The learned counsel for the applicant has been repeatedly drawing our notice to the disproportionate nature of the punishment to the gravity of the offence alleged. The order of the appellate authority, as quoted earlier, reads as follows:

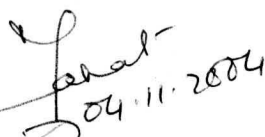
"The party may be reinstated as Asst.Driver in the initial grade with loss of seniority this is to give him another chance."


Under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968, two types of penalties are prescribed, namely, minor penalties and major penalties. These penalties are statutory in nature and the penalties are described in the statute book which also are to be used by the disciplinary/appellate authority while inflicting one of these penalties. We, however, do not find that the penalty which has been imposed by the appellate authority, i.e., reduction to initial grade with loss of seniority as one of the major or minor penalties listed under Rule 6(1) of the said Rules. As the penalty modified by the appellate authority by his order dated 29.7.1996 does not constitute one of the statutory penalties prescribed under Rule 6(1) of the Railway Servants (Discipline & Appeal) Rules, 1968, the same is liable to be quashed, being devoid of legal sanction and imposed by the appellate authority without application of mind. In the circumstances, the order dated 29.7.1996 passed by the appellate authority, i.e., Divisional Railway Manager, S.E.Railway, Chakradharpur Division, is hereby quashed and we remand the case back to the appellate authority to reconsider the whole matter, especially with reference to the fact

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that the Enquiry Officer's report finding the applicant guilty of consumption of liquor while on duty was based on no evidence and that no medical examination of the applicant was carried out in terms of the Railway Board's letter dated 23.10.1969, and pass appropriate order strictly within the ambit of Rule 6(1) of the Railway Servants (Discipline & Appeal) Rules, 1968. Before passing any order, the applicant is entitled to be heard, if he is so advised.

7. With the above direction, the Original Application is disposed of. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

am/ps