

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.219 of 2012
Cuttack, this the 21st day of December, 2015

D.K. Kar Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*

(R.C. MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR.R.C.MISRA, MEMBER (A)

.....

D.K. Kar, aged about 43 years, son of Sri Debendra Kumar Kar, working as Head Goods Clerk under Senior Divisional Commercial Manager, E.Co. Rly., Khurda Road residing at Sriram Nagar, near Telephone Bhavan, Dist. Khurda, Pin-752055.
...Applicant

(Advocate: M/s. G. Rath, D.K. Mohanty)

VERSUS

Union of India Represented through

1. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Pin-751023.
2. The Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, Pin-752050.
3. The Divisional Commercial Manager, East Coast Railway, Khurda Road, Jatni, Khurda, Pin-752050.
4. The Divisional Operations Manager, East Coast Railway, Khurda Road, Jatni, Khurda, Pin-752050.
5. Sri N. Padhi, Inquiry Office, Office of Sr. Dy. General Manager, E.Co. Railway, Bhubaneswar, Pin-751023.

... Respondents

(Advocate: Mr. S.K. Ojha)

ORDER

R.C. MISRA, MEMBER (A)

The applicant who is a Head Goods Clerk under Senior Divisional Commercial Manager, East Coast Railways has approached the Tribunal by filing this O.A. making the prayer as below:-

- 1) To quash the charge-sheet at Annexure-A/1.
- 2) To quash the report of the I.O. at Annexure-A/3
- 3) To quash the order of Disciplinary Authority dated 12.06.2008 at Annexure-A/5.
- 4) To quash the order of Appellate Authority dated 22.09.2008 at Annexure-A/7.
- 5) To quash the order of Appellate Authority dated 17.01.2012 at Annexure-A/9.

and

- 6) To direct respondents to pay the applicant all his service and financial benefits retrospectively.



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2. Facts of the case can be succinctly put as follows. The applicant while working as Station Master at Charbatia, was served with a charge-sheet dated 13.03.2007 under Rule 9 of the Railway Servants (D&A) Rules, 1968. On receiving the Charge-sheet, applicant submitted a written statement of defence dated 31.08.2007, and thereafter the Disciplinary Authority appointed an IO, and a PO on 17.09.2007 for inquiring into the charges. The IO submitted his inquiry report on 17.03.2008, a copy of which was given to the applicant, whereupon he submitted a written representation dated 28.03.2008. On consideration of the same, the Disciplinary Authority passed a punishment order dated 12.06.2008, by which the applicant was reduced from the grade of Rs.5000 -8000 to the initial grade of Rs.4500-7000 with a pay of Rs.5375/- for a period of 5 years without loss of seniority after expiry of the punishment period. The applicant filed an appeal dated 18.07.2008 against the order of punishment. In consideration of this appeal, the Appellate Authority modified the order of punishment to reduction of applicant's existing pay in the present scale of Rs.5000-8000/- by one stage for a period of one year with cumulative effect. The order of the Appellate Authority was passed on 22.09.2008. Challenging the order of the Appellate Authority, applicant filed O.A. No.08/2009 before the Tribunal. This O.A. was disposed of by the Tribunal by an order dated 02.08.2011.

3. The Tribunal gave an observation that the Appellate Authority held that there has been no pecuniary loss to the Railways as an amount of Rs.9000/- has been realized as demurrage charges, the charge was not proved against the applicant, and therefore, it was incumbent on the Appellate Authority to rather absolve the applicant of the charge of misconduct, than to modify the punishment order contrary to his own finding. The Tribunal also observed that the

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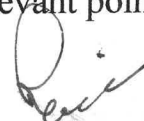
Appellate Authority did not give a chance of personal hearing to the applicant, which was a deficiency in the order. With these observations, the Tribunal quashed the order of the Appellate Authority, and remitted the matter back for reconsideration.

4. The Appellate Authority passed an order dated 17.01.2012 in obedience to the orders of the Tribunal in O.A. No.08/2009. This order makes a mention that a modified punishment in lighter form is awarded to meet the ends of justice and fairplay, and that earlier order dated 22.09.2008 of the Sr. DCM as Appellate Authority was not taken into consideration at all. The modified punishment order awarded is noted below:-

“With immediate effect, the present pay is reduced by one stage in the present grade for a period of three months with cumulative effect, that is, it will have the effect of postponing the future increment of pay on restoration.”

This second order of the Appellate Authority is the subject of challenge by the applicant in the present O.A.

5. The respondents have filed a counter affidavit in which while reiterating the facts of the case they have submitted that no statutory principle is violated in the conduct of disciplinary proceeding, and that the requirement of natural justice is fully complied. Even if no loss is caused to the Department, since the demurrage amount was realized from the consigner, the applicant can not absolve himself of the charge of misconduct. The Tribunal in the earlier OA did not interfere with the initiation of disciplinary proceeding or with the orders of the Disciplinary Authority. On the other hand, the Tribunal interfered only with the orders of the Appellate Authority on the ground of some lacunae. Therefore, the matter was remanded for reconsideration at a particular stage. The order of the Appellate Authority dated 22.09.2008 contains all the relevant points which hold



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relevance in the case. The Appellate Authority re-examined the matter in obedience to the observations passed by the Tribunal, and finding the applicant guilty of misconduct, passed reasoned order dated 17.01.2012 imposing punishment in a lighter form supported by a speaking order. It is further contended that the Disciplinary and Appellate Authorities have duly complied with the provisions under Rule-9 (9)(a) (i) and (ii) of Railway Servants (D&A) Rules. On the facts of the charges, it is submitted that there was no scope for the railway administration to realize the demurrage charge for the extra period of three hours since the applicant in the Station Master's diary had recorded the completion of loading time as 15.00 hours whereas the loading was continuing at 17.30 hours as noticed during vigilance check. The fact that the demurrage charge was collected at a later stage does not absolve the applicant of the misconduct committed by him. The realization of demurrage charge was possible due to vigilance check; but the fact remains that applicant indulged in an act of misconduct by helping the party in avoiding the payment of demurrage charges.

6. In the counter-affidavit, the respondents have insisted that all procedures were followed and applicant was given due opportunity in pursuance of the principle of natural justice. Applicant was given personal hearing on 02.09.2008 and 12.10.2011 before final orders dated 22.09.2008 and 17.01.2012 respectively were issued. In obedience to the orders passed by Tribunal on 02.08.2011 in O.A. No.08/2009, the Appellate Authority considered the appeal afresh on merits and passed orders dated 17.01.2012.

Thus the respondents have submitted that the O.A. is devoid of merit.

7. Having heard the learned counsel for both the sides, we have perused the records. Both ld. counsels have filed written notes of submission. The ld.

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counsel for applicant in his written notes of submission, has argued that the respondents did not understand the import of the observations of the Tribunal passed while disposing of the O.A. No.08 of 2009, and remitting the matter back to Appellate Authority ^{to} reconsider the appeal. His submission is that the Tribunal observed that since no pecuniary loss was caused to the respondents, no charge did exist according to the finding of the Appellate Authority, and therefore, Appellate Authority should have dropped the charges, rather than reduced the quantum of punishment. In this view of the matter, Appellate Authority by passing the modified order now under challenge, has gone against the observations of the Tribunal. In fact, the Appellate Authority should have simply gone by the observations of the Tribunal, and he had no scope for further application of mind while reconsidering the appeal.

8. The ld. counsel for the Railways –respondents in his written notes has rebutted the point made by the applicant’s counsel in this regard. He has cited the position of law as enunciated by the Hon’ble Apex Court in the case of State Financial Corporation Vrs. Jagadamba Oil Mills (AIR 202 SC 834), which lays down that the observations of the Courts are not to be read as Euclid’s theorems nor as provisions of the statute. The Appellate Authority has gone by the observations of the Tribunal, and reconsidered the matter, and passed appropriate orders in consonance with the position of Rules. In the case of the applicant the Tribunal has not quashed the charge-sheet or the disciplinary proceeding. It has only directed the Appellate Authority to reconsider his order. In the present case, the applicant as the delinquent in the disciplinary proceeding has admitted the charge by mentioning that ‘the mistake so made is not intentional’. The Hon’ble Apex Court in the matter of Dy. Commissioner, KVS Vrs. J. Hussain (AIR 2014 SC 766) has decided that the competent authority is at liberty to impose a

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punishment commensurate with the gravity of the misconduct. The financial loss caused to the Railways could be compensated by way of recovery from the consigner, but the charge of misconduct survives against the applicant and therefore, the reduced punishment awarded is just and proper. The Hon'ble Apex Court in the case of Om Prakash Vrs. State of Punjab & Ors. (2011) 14 SCC 682, has decided that regularization of unauthorized absence period by way of granting leave can not be termed as condoning the lapses of the delinquent. In such analogy, even if the loss caused to the department could be recovered due to subsequent action, but the lapses of the delinquent applicant could not be condoned automatically due to such recovery.

9. We have given our earnest and anxious consideration to the various arguments advanced by both ld. counsels. It will be mere repetition, if we again mention the facts of the case. But before taking a final view we deem it necessary to go through the orders dated 17.01.2012 passed by the Appellate Authority, in compliance of the directions issued by the Tribunal in O.A. No.08/2009 decided on 02.08.2011.

10. By order dated 17.01.2012, the Appellate Authority has communicated a modified order in obedience to the orders of the Tribunal, to the applicant. Enclosed with this communication is a detailed speaking order. A perusal of the speaking order reveals that the Appellate Authority has considered the matter afresh and has not taken into consideration the orders passed by the then Sr. Divisional Commercial Manager dated 18.07.2008, as Appellate Authority. The order mentions that the observations made by the Tribunal have been noted with due humility and care. The Appellate Authority has noted that change in Disciplinary Authority/Appellate Authority was only on account of

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change of the Department of applicant from Operating to Commercial on account of his being medically decategorised. This did not require issue of fresh charge-sheet. On the important issue of personal hearing, it is noted that on 12.10.2011, applicant was heard at length and his point of view was noted. All documents were supplied to the applicant, and the proceedings were conducted in a transparent manner. The speaking order is very detailed, based upon a cogent analysis of the facts. While it is not felt necessary by us to dwell upon every aspect of this order, we find that the contentious issue of pecuniary loss being subsequently realized from the consigner has received due consideration. The Appellate Authority has decided that had the check not been conducted, then the demurrage would have been calculated in a different manner, without taking into account the extra time taken by the party in load adjustment, etc. which is to the tune of two hours and thirty minutes, and therefore, the contention of the applicant was not accepted.

11. At para (i) of the speaking order, the Appellate Authority has observed that he is inclined to consider the case a bit leniently on grounds of sympathy only, and also because Station Master at a station is loaded with multifarious tasks. However, Appellate Authority has come to the conclusion that the applicant, i.e., the charged official in the proceeding has acted in a manner unbecoming of a railway servant indicating failure to maintain devotion to duty. Therefore, the Appellate Authority decided upon awarding a lighter punishment, and passed a modified order of reduction by one stage in the present grade for a period of three months with cumulative effect.

12. A fair appraisal of the above order of the Appellate Authority would reveal that the order is well reasoned, comprehensive and judicious. The only contentious issue that we have to address ourselves to is whether the Appellate

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Authority has duly considered the observations made by the Tribunal while passing his fresh order. The ld. counsel for applicant submits that the Appellate Authority should have dropped the charges, as the observation made in this regard by the Tribunal was a mandatory direction. The ld. counsel for Railways on the contrary opposes this claim by submitting that observations have to be duly considered in accordance with law. We have to weigh these contentions carefully, and test them on the anvil of the settled position of law regarding the scope of interference of the Tribunal in matter of disciplinary proceedings.

13. The Tribunal ^{made} had a pertinent observation about denial of opportunity of personal hearing to the applicant. This aspect is very important in view of the decision of the Hon'ble Apex Court in the case of Ramchand ^r Vrs. UOI & Ors. (AIR 1986 SC 1173). The speaking order impugned in the case specifically mentions about opportunity of personal hearing afforded to the applicant. There is, therefore, no deficiency noticed on this account, in the orders passed by the respondents.

14. In the O.A. No.08/2009, the Tribunal has quashed the order issued by the Appellate Authority, and remitted the matter back to the said Appellate Authority with a direction to issue appellate orders afresh keeping in view the observations made within a period of sixty days of the date of communication of the order. This implies that the Tribunal made observations as deemed proper, but asked the Appellate Authority to reconsider the matter and issue fresh orders. A disciplinary proceeding is quasi-judicial in nature, and the Hon'ble Apex Court in the case of Dev Singh Vrs. Punjab Tourism Development Corporation Ltd (2003) 8 SCC 9 has held that, "a Court sitting in an appeal against a punishment imposed in the disciplinary proceeding will not normally substitute its own conclusion on penalty." The observations made by the Tribunal are guidelines



for the Appellate Authority to take note of while reconsidering the matter. In this regard, the contention of the ld. counsel for respondents is that the Tribunal in the earlier round of litigation has not quashed the charge-sheet, nor has it set aside the disciplinary proceeding. The Appellate Authority while reconsidering the matter has noted that it is a fact that there was no pecuniary loss because demurrage charge was realized from the consigner subsequently, but that happened after the vigilance check. The misconduct of the applicant in wrong recording of loading hours still subsisted which however deserved a lighter punishment based upon the observations of the Tribunal. The contention of ld. counsel for respondents, therefore, appears more credible in this regard. The Tribunal had given observations no doubt, but has not passed any final orders; but on the other hand directed appellate authority to consider the matter again and issue fresh appellate orders. Thereafter, the Appellate Authority has passed a reasoned order, with due application of mind. We do not find any trace of defiance or non-consideration of the observations of the Tribunal in the fresh appellate order.

15. It will be contextual here to quote from the decision of the Hon'ble Apex Court in the case of State Bank of India Vrs. Samarendra Kishore Endow [1994 (1) SLR 516]

“ On the question of punishment, Ld. Counsel for the respondents submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the Appellate Authority to interfere with it, but not to the Hon'ble High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the Hon'ble High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision, but a review of the manner in which the decision was made. In other words, the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure

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that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court”.

16. This judgment of the Hon’ble Apex Court clearly defines the limits of judicial review in matters of disciplinary proceedings. Judicial review does not extend to fresh evaluation of evidence; nor does it empower the Tribunal to dictate to the Disciplinary or the Appellate Authority what conclusion to reach. Judicial review is warranted and necessitated in order to ensure that the delinquent’s case is handled in a fair and objective manner, and in keeping with the law by the competent authorities. More importantly, judicial review is exercised with a view to ensuring that the principle of natural justice is fully complied with, and also preventing the authorities from deciding such matters in a partisan manner, by jettisoning the right of the delinquent official to an opportunity of being heard. Judicial review is not done with a view to supplanting the decisions of the competent authorities under the statute by decisions of the Courts or Tribunals.

In the present case also we have to understand the implications of the decision of the Hon’ble Apex Court, before coming to a conclusion in the matter before us.

17. Apart from the above, we do not find any disproportionality with regard to the punishment. The punishment imposed by the Disciplinary Authority was modified by the Appellate Authority, and thereafter applicant approached the Tribunal in O.A. No.08/2009. In compliance with the orders of the Tribunal, the Appellate Authority further modified the order of punishment which was made lighter. In view of these facts, the applicant could not obviously make out a case that the punishment imposed is harsh or disproportionate.

See.

18. We also consider it relevant to quote from another important decision of the Hon'ble Apex Court on the same subject matter; i.e., B.C. Chaturvedi Vs. UOI and Others (1996 AIR 484).

“ 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 Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.”

Thus the scope of judicial review of the Tribunal in the matter of a disciplinary proceeding is ~~this~~^{not} laid out clearly in a number of important judicial pronouncements.

19. We have thus examined the entire factual matrix of the case, the sequence of events, and also the impugned order of the Appellate Authority dated 17.01.2012 which has been issued in compliance of directions of the Tribunal in its order dated 02.08.2011 in O.A. No.08/2009. We have considered the rival contentions of both ld. counsels, and gone through relevant judicial pronouncements of the Hon'ble Apex Court on the subject. On the basis of these detailed considerations, we do ^{not} find anything inappropriate or erroneous in the order dated 17.01.2012 of the appellate authority which is impugned in this O.A.

20. Thus the O.A. being found to be devoid of merit is dismissed.
Parties to bear their respective costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)