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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.No.260/00519/2012

Date of Order : *March, 16, 2017*

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

HON'BLE SHRI S.K. PATTNAIK, MEMBER (J)

B. Ramakrishna aged about 51 years, S/o Shri B.S.Narayan, At-Quarter No. 173/2 R.E. New Colony, Vijayanagaram, District Vijayanagaram (Andhra Pradesh) At present residing at Jatni, At/PO Jatni, District Khurda. **...Applicant**

By the Advocate – Mr.S.B.Jena

-V E R S U S-

1-Union of India represented by the General Manager, East Coast Railway, At – Kali Vihar, PO Chandrasekharapur, Bhubaneswar, District Khurda.

2-Senior Divisional Operations Manager (G), East Coast Railway, Waltair, District Vishakhapatnam (AP).

3-Divisional Operations Manager (M), East Coast Railway, Waltair, District Vishakhapatnam (AP)

4-Senior Divisional Personnel Officer, East Coast Railway, Waltair, District Vishakhapatnam (AP). **...Respondents**

By the Advocate-Mr. T. Rath

ORDER

Per R.C.MISRA, MEMBER(A):

The applicant in the present case has approached this Tribunal challenging the Memorandum of Charges under Annex.A/5, the order of punishment passed by respondent No. 3 Divisional Operation Manager under Annex. A/8 and the order passed by respondent No. 2 the Sr. Divisional Operating Manager under Annex.A/11 wherein the order of removal passed by the respondent No. 3 has been modified to order of compulsory retirement during the pendency of the O.A.

2. The brief facts of the case are that when the applicant was working as Senior Token Porter under the Station Manager, Vijayanagaram charges were framed against him vide Memorandum dated 5.7.2011. The exact allegation made against the applicant was that during the period from the year 2000-2006 the applicant did not inform the Railway administration that he acquired the house in Plot No. 8 Survey No. 89/2 in Employee's Welfare Colony in Ayyanapeta, Kanapaka village. It was further alleged that the applicant availed of a housing loan from the Union Bank of India, Vijayanagaram without any intimation being given to the respondents, therefore, the allegations were about non intimation of acquisition of immovable property which is in violation of the Railway Conduct Rules. The applicant submits that on 12.1.2000 he had applied under C-Form No. 1 for sanction which is also prior intimation to the authority under the 18 (2) of the CCS (Conduct) Rules, 1954. Although, he did not get any intimation from the



respondents authorities, anticipating their approval that he will get permission to purchase the land he executed a sale-deed on 12.12.2000 and intimated this fact to the authorities. It is submitted that the applicant being a union leader had some hostile people around him who wrote against him to the Senior Divisional Personnel Officer and basing on the allegations an inquiry was conducted against the applicant. Although, the applicant gave his reply to the allegations, a Memorandum of charges ^{was} ~~were~~ served on the applicant by a letter dated 5.7.2011. A perusal of the memorandum of charges reveals that there were two Articles of Charges served on the applicant which are quoted below :

"Article - I

Shri B. Ramakrishna did not intimate the Railway Administration of himself "Acquiring the House Plot No. 8 covered by survey No. 89/2 in Employee's Welfare colony in Ayyannapeta, Kanapaka village from Shri Pathiwada Atchanna and getting the necessary sale-deed executed in the sub-Registrar's Office at Vizianagaram on 12.12.2000 and did not intimate the above transaction in the requisite format by revealing his pay particulars, date of acquisition of the above plot, as to how he has acquired the above property, details of location, other description, source as to how he managed the Finance.

Article-II

During the aforesaid period, the said Shri B. Ramakrishna, did not intimate the Railway Administration his clear intention of obtaining an Individual Housing Loan from "Union Bank of India", Vizianagaram by furnishing the details of house-plot, location; as to how it was acquired in his favour to the Railway Administration before submission of his Loan application to the Union Bank with his employment details, monthly income and expenditure, purpose for which he was seeking sanction of loan, estimated cost of construction of house for an amount of Rs. 3,00,000/-, with his saving of Rs. 75,000/-, seeking sanction of loan Rs. 2,25,000/- and mortgaging his sale deed with Union Bank of India."

3. An Inquiry Officer was appointed to inquire into the allegations and the applicant submits that the inquiry was conducted in a haphazard manner and no opportunity was provided to the applicant. The inquiry officer submitted his report to the Senior Divisional Operations Manager. The copy of the inquiry report was also given to the applicant who submitted his representation against the inquiry report to the said Senior Divisional Operating Manager. After consideration of the inquiry report and the representation filed by the applicant the Divisional Operating Manager (respondent No. 3) passed an order of punishment of removal dated 5.7.2012 which is filed at Annex. A/8 of this O.A. The applicant being aggrieved by such order submitted an appeal to the respondent No. 2 challenging the order of punishment and prayed that he may be reinstated in service. The appellate authority passed an order on the appeal petition on 12.2.2013 in which he concluded that the charged official deserves to be punished for his lapses. However, the punishment imposed appeared to be severe compared to the gravity of the lapse committed, and, therefore, the appellate authority revised the penalty

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from "removal from service" to that of "compulsory retirement" with pensionary benefits as admissible for his length of service. The allegations of the applicant are that even though the order of punishment was illegal, perverse and arbitrary, the appellate authority, without considering the genuine grounds in the appeal petition only modified the order of removal to compulsory retirement. The further allegation of the applicant is that the appellate authority in his so called speaking order did not discuss anything in detail and in a cryptic manner came to the conclusion that the findings of the inquiry are justified and the charged official deserves to be punished for his lapse. He merely revised the penalty from removal from service to compulsory retirement with pensionary benefits.

4. The Respondents Railways have filed a counter affidavit in the case and submitted that the applicant while working as Sr. Token Porter acquired a house and executed a sale-deed on 25.8.2000 without obtaining prior approval for the purchase of the landed property and without intimating the transaction to the Railway administration. The applicant also secured bank loan of Rs. 2.25 Lakhs from the Union Bank of India by giving his personal and employment details and mortgaged his sale-deed. He did not take prior approval for the transactions from the Railway authorities and did not intimate about this transactions also. The disciplinary proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 were initiated and after the conclusion of the inquiry, the competent authority on considering the inquiry report, awarded the punishment of removal from service. The revisional authority on consideration of the mercy appeal of the applicant modified the punishment of removal from service to compulsory retirement with all pensionary benefits. Therefore, there is no scope for any further intervention by the Tribunal in this matter. It is further submitted that there are many complaints and allegations against the applicant and vigilance case is also pending against the applicant. The activities of the applicant being unbecoming of a Railway servant, he is not entitled to any relief from this Tribunal as per the submissions made by the respondents in the counter affidavit.

5. We have heard the learned counsels for the parties and perused the records.

6. The learned counsel for the applicant has submitted written note of submissions in which he has raised the issue that the punishment order is a mala fide one and have been passed only because of the fact that he was the office bearer of a union and was in conflict with the management on some occasions. He had in

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fact submitted application praying for permission to purchase a land and he purchased the same in the good faith that permission would be granted by the authorities. However, the main plank of argument of the learned counsel for the applicant is that the punishment imposed on him is dis-proportionate to the gravity of the misconduct to the extent that it would shock the conscience of the Court. The revisional authority has in fact found that the punishment was dis-proportionate with the gravity of charges. However, he did not apply his mind but merely modified the order of punishment of removal to the order of compulsory retirement. The applicant was hardly 50 years old and should not have been thrown out of service at this young age thus striking down his source of livelihood.

7. In this regard, the learned counsel for the applicant has brought to our notice the case of **Ranjit Thakur Vs. UOI & Ors.** reported in 1987 AIR 2386 and 1988 SLR (1) 512 in which the Hon'ble Apex Court has taken the view that the punishment was so strikingly disproportionate as to call for and justify interference. The Hon'ble Apex Court noted that irrationality and perversity are recognized grounds of judicial review as is opined in the following judgment in **Council of Civil Service Unions Vs. Minister for the Civil Service (1984)(3)Weekly Law Reports 1174, (HL)** by Lord Diplock which reads as under :

"..... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. The second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

8. The learned counsel has also quoted a judgment of the Hon'ble Orissa High Court in the matter of **Subhash Chandra Panda Vs. State of Orissa and Ors.** reported in 2013 (1) ILR – CUT 750 in which the Hon'ble High Court held that the punishment imposed was shockingly dis-proportionate to the charges proved and, the past service record of the petitioner was not taken into consideration. Therefore, the impugned order of removal of the petitioner from service was quashed as the same suffered from doctrine of proportionality.

In the case of **Coimbatore District Central Cooperative Bank Vs. Employees Association and Anr.** reported in 2007 (2) SCC (L&S) 68, it has been held that the



doctrine of proportionality has its genesis in the field of administrative law. If punishment imposed on an employee by an employer is grossly excessive, disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny and it is always open to a Court to interfere with such penalty in appropriate cases. In the case of **B.C. Chaturvedi Vs. UOI & Ors.** reported in AIR 1996 SC 484 a three judges Bench of the Hon'ble Apex Court has held as follows :-

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, it will appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

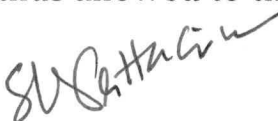
9. The present facts of the case have been viewed by us as against the law as laid down by the Hon'ble Apex Court with regard to the doctrine of proportionality. In a case where the allegations were that the applicant had purchased immovable property without prior permission from the Departmental authorities a punishment of removal from service is without any doubt disproportionate to the charges having been proved in course of the inquiry. Even the revisional authority by passing a cryptic order that the punishment of removal from service is modified to compulsory retirement along with retiral benefits has not done justice to this case. Even though he has mentioned in his order that the punishment imposed was very severe compared to the gravity of the lapse committed he has not given his consideration to the rectification of this order. We are also of the view that the revised order of compulsory retirement is also dis-proportionate to the lapse committed. We have no hesitation in mind that the power of judicial review must be exercised to rectify the dis-proportionality and give justice to the applicant. In normal course, this Tribunal is not to interfere with an order of punishment. The disciplinary authority and the appellate authority being the fact finding authorities have the power to decide the quantum of punishment. This is however, not an ordinary matter and the conscience of this Tribunal has been shocked by the quantum of punishment imposed upon the applicant. In the case of B.C. Chaturvedi (supra) Hon'ble the Apex Court has specifically laid down that in a case where the punishment imposed shocks the conscience of a Court or Tribunal, it will appropriately mould the relief either directing the disciplinary or the appellate




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authority to re-consider the penalty imposed or, to shorten the litigation, it may itself in exceptionally rare cases impose appropriate punishment with cogent reasons in support thereof. However, we do not intend to directly decide the appropriate punishment and would not like to substitute our judgment for the judgment of the concerned statutory authorities who have to decide the quantum of punishment. On the other hand, we consider it appropriate to direct the appellate authority to re-consider the quantum of punishment on the applicant and decide upon a punishment which would be proportionate to the charges proved against him and which will also meet the ends of justice.

10. In view of above, we quash the impugned orders of punishment passed by respondent No. 3 i.e. Divisional Operations Manager under Annex.A/8 and the order passed by the Senior Divisional Operations Manager i.e. respondent No. 2 under Annex. A/11 and remit the matter back to the appellate authority (Respondent No.2) for re-consideration of the order of punishment in the light of the observations and directions given above. The applicant be accordingly reinstated in service with immediate effect. The concerned authority may now pass an order suitably punishing the charged employee for his misconduct, within a period of 60 (sixty) days from the date of issue of this order which shall be communicated to the applicant with a reasoned and speaking order. The O.A. is thus allowed to the extent as mentioned above, with no order as to costs.


(S.K.Pattnaik)
Member (J)


(R.C.Misra)
Member (A)