

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 21.08.2014.

Pronounced on 18th September 2014.

Original Application No.418/2007

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)
HON'BLE DR. MURTAZA ALI, MEMBER (J)

S.C. Rastogi, aged about 52 years S/o Late S.S. Lal, resident of 448/1173 Kalyan Puri Colony, Nagaria, Thakurganj, Lucknow working as Chief Personnel Inspector, Divl. Railway Manager Officer, N. Rly., Lucknow.

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through General Manager, N. Rly, Baroda House, New Delhi.
2. Chief Personnel Officer (Administration), Northern Railway, Baroda House, New Delhi.
3. Additional Divisional Railway Manager I, N. Rly., Hazratganj, Lko.
4. Senior Divl. Personnel Officer, Northern Railway, Hazratganj, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

ORDER

BY MS. JAYATI CHANDRA, MEMBER (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

J. Chandra

- "(8.i) In the interest of justice, the Hon'ble Tribunal be pleased to set aside the order dated 13.11.03 passed by the Disciplinary authority, Opposite Party No.4 contained in Annexure No.A-3, appellate order dated 14.1.04 passed by the appellate authority, Opposite Party No.3 contained in Annexure No.A-5 and Revisional order dated 24.3.05, contained in Annexure No.A-7 alongwith further Disciplinary authority's order dated 10.5.05 contained in Annexure No.A-9 and appellate order dated 3.8.07 contained in Annexure No.A-11 be set aside in view of facts mentioned in para 4.1 to 4.19 and grounds mentioned in Para 5.A to 5 (K) above.*
- (8.ii). Any other order/relief within the Hon'ble Tribunal deems fit and appropriate in the interest of justice be awarded to the applicant."*

2. The facts of the case are that the applicant while working as Chief Personnel Inspector in the D.R.M. Officer, Northern Railway, Lucknow was given a minor penalty by Sr. Divisional Personnel Officer (Respondent No.4) of withholding of annual increments without cumulative effect for the period of 2 years by an order dated 13.11.2003. He appealed against the same. However, the Appellate Authority (Respondent No.2) by means of an order dated 14.01.2004 affirmed the order of Disciplinary Authority without taking merits of the case into consideration.

3. The background of the case is that the applicant was issued a Memorandum of charges by an order dated 7.8.2008 By which he had been charged for late submission of Guardianship report in the case of minor daughter of Late Sri Brahmadeen, Trolleyman. It was charged that he took eight months to find and appoint a guardian for the daughter Km. Laxmi. The applicant submitted his explanation vide reply dated 20.08.2003, which was rejected by the Disciplinary Authority's order

J. Chandra

dated 13.11.2003 imposing the penalty of withholding of increments for a period of 2 years, temporarily. He preferred an appeal dated 29.12.2003 to the Appellate Authority (Respondent No.3) but the appeal was rejected by an order dated 14.01.2004. The applicant filed Revisional Petition dated 17.1.2005 to the Chief Personnel Officer (Annexure-2) demonstrating date wise movement that there was no delay on his part. By an order dated 24.3.2005 the Revisional authority in the capacity of Chief Personnel Officer (Admn.) had held that petition was time barred. By the same order, the Revisional Authority suo-moto have pointed out certain technical lapses in the Disciplinary Authority's order dated 13.11.2003 i.e. the same had been issued under the signature of Senior Divisional Commercial Manager instead of Sr. Divisional Personnel Officer. The Appellate order was also not signed under the appropriate designation. The Disciplinary Authority being quasi-judicial in nature the Appellate Authority should be in accordance with Rule 22 (2) of Railway Servants (Discipline & Appeals) Rules, 1968 and hence the order of the Disciplinary and Appellate Authority were set-aside and the case was remanded to the Disciplinary Authority to start the proceedings from the stage of issue of the punishment orders. In pursuance of the order of Respondent No.2, the Disciplinary Authority rectified the technical errors and issued an order dated 10.05.2005 repeating the earlier order of withholding of increments for 2 years, temporarily. The applicant submitted an appeal dated 25.7.2005 to the Appellate Authority. However, the appeal was again rejected mechanically after a lapse of 2 years 14 days on 03.08.2007. The

J. Chandra

applicant has challenged both the orders of Disciplinary Authority and Appellate Authority on the ground that as per the period table produced by him he cannot be held responsible for any delay. The case of finding a guardian was very sensitive as the Govt. employee died leaving his sole and minor daughter Km. Laxmi and there was no other close family member. One Sri Asha Ram S/o Sri Baliraj, Son-in-law of the maternal uncle of the deceased employee was finally persuaded by the applicant to apply for obtaining guardian-ship of Km. Laxmi. Further, Sri Asha Ram had to open Bank A/c and all these procedures took time. Further, as clarified by Sri Asha Ram himself by his un-dated letter submitted as (Annexure-20) there was no unexplained or unreasonable delay on his part. Further, the applicant has stated that the Revisional Authority without justification had cancelled earlier order of the Disciplinary Authority dated 13.11.2003 and Appellate Authority order dated 14.01.2004. The order dated 13.11.2003 was passed in cursory manner and the Appellate Authority has not just taken the order but had not exercised his jurisdiction. Further, the Revisional Authority in this case should have been the Principal Head of the Department and not Head of Department. Hence, the order of Chief Personnel Officer (Admn.) is liable to be set-aside being non-est in the eyes of law. Moreover, order dated 10.05.2005 issued by the Disciplinary Authority without application of mind and Appellate Authority dated 3.8.2007 (Annexure-11) is also liable to be set-aside as it was passed after a lapse of two years.

J. Chandra

4. The charge-sheet itself was passed after two years of the incident on the initiation of Vigilance Officer, which is an after-thought when the alleged lapse has already been accepted. Initially the Appellate Authority on the application of the applicant had taken the provisional decision to reduce the punishment from WIT 2 years to stoppage of passes. But this decision was changed after consultation with the Vigilance Branch, Headquarters Office, New Delhi. Thus, the Appellate Authority without exercising his independent jurisdiction had rejected the appeal of the applicant vide order dated 3.8.2007 after a period of 2 years.

5. The respondents have controverted the averments of the applicant. The applicant was served with minor penalty charge sheet dated 07.08.2003 for the charges of late submitting of report for obtaining Guardian-ship Certificate in the case of Sh. Brahmadeen, Trolley man and hence, he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of Railway servant. He submitted his defence statement dated 20.08.2003 and Disciplinary Authority i.e. Sr. Divisional Personnel Officer, Northern Railway, Lucknow awarding punishment for WIT 2 years vide order dated 13.11.2003. Thereafter, he preferred an appeal against the order dated 13.11.2003 to ADRM, Northern Railway, Lucknow i.e. (Appellate Authority, who confirmed the punishment vide order dated 14.01.2014. Further, he moved revision petition through URMU to Chief Personnel Officer, Northern Railway, Baroda House, New Delhi vide letter dated 19.04.2005. The Revisional Petition was sent to Revisional Authority i.e. Chief

J. Chandra

Personnel Officer, Northern Railway, Baroda House, New Delhi and Chief Personnel Officer (Admn.), Northern Railway, Baroda House, New Delhi vide letter dated 29.03.2005 remitted the case to the Disciplinary Authority vide Memorandum dated 24.03.2005 on the ground of certain technical lapses. The Disciplinary Authority passed fresh order vide revised order dated 10.05.2005 and the Appellate order dated 03.08.2007. In the case of **State Bank of India Vs. Tarun Kumar Banerjee and Others (2000) 8 SCC-12** the **Hon'ble Supreme Court** has held that "when sufficient evidence was produced to conclude one way or the other, the evidence not produced will not be of any significance unless there was such evidence which was withheld would have tilted the evidence adduced in the course of domestic enquiry." Further, the **Hon'ble Supreme Court in the case of Devendra Swamy Vs. Karnataka State Road Transport Corporation 2002-I-LLJ-454 SC** has held that punishment not to be interfered with individual review. There was never any contention of delay as was noticed in the punishment order.

6. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

7. We have heard the learned counsel for both the parties and perused the entire material available on record.

8. The scope of judicial intervention in the matter of disciplinary cases was examined, in detail, by Apex Court

J. Chandra

in the case of **B.C. Chaturvedi Vs. Union of India reported in 1995 (6) SCC 749** in which it has been broadly held that the judicial review in disciplinary proceedings is must to be the limited extent to the examination whether the departmental action/proceedings have been held in accordance with rules for governing such disciplinary proceedings; (2) whether there has been any violation of principles of natural justice; (3) whether the decision arrived at is passed on initial certain extraneous evidence/consideration 4) the conclusion of prima-facie arbitrary or captious; or any other similar ground. This view has been subsequently upheld by Hon'ble Supreme Court in the case of State of Rajasthan Vs. Mohd. Ayub Naz reported in 2006 (1) SCC 589. Therefore, it can be concluded that the judicial review lies on the aspect of procedural irregularity and denial of legitimate opportunity for presenting his case.

9. The **Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** again has been pleased to observe that "the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence."

10. In another case the **Hon'ble Apex Court in the case of Union of India v. Upendra Singh reported in 1994(3) SCC 357** has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of

J. Chandra

the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

11. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of ***State of Rajasthan v. Md. Ayub Naaz reported in 2006 (1) SCC 589***. The Honble Apex Court has been pleased to observe as under:-

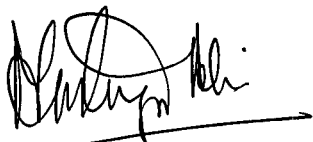
"10. This Court in *Om Kumar v. Union of India* while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for."

12. As stated above that the Tribunal or the Court cannot sit in appeal over the decision of disciplinary authority nor can substitute its view in place of the said authority. The disciplinary authority was within his right to issue appropriate punishment as he may have deemed

J. Chandra

fit and proper. The Tribunal is not competent to go into the quantum of punishment inflicted by the disciplinary authority unless it is shockingly disproportionate. The Tribunal cannot sit as an appellate authority on the decision of the disciplinary authority or exercise their jurisdiction of judicial review in disciplinary matters if there is no apparent illegality.

13. In view of what has been stated above, we do not find any merit in the O.A. and the same is accordingly dismissed. No order as to costs.



(Dr. Murtaza Ali)
Member-J



(Ms. Jayati Chandra)
Member-A

Amit/-