

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 295 of 2012

Order Reserved on 21.5.2014

Order Pronounced on 08/7/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

B. N. Pandey, aged about 53 years, son of Late r. N. Pandey, Resident of SS 157 sector ELDA colony, Kanpur Road Lucknow.

Applicant

By Advocate: Applicant in person.

Versus

1. Union of India, through General Manger, Northern Railway, Baroda House New Delhi.
2. Financial Adviser and Chief Account Officer, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Lucknow Division, Northern Railway, Lucknow.
4. Senior Divisional Finance Manager, Lucknow Division, Northern Railway, Lucknow.

Respondents

By Advocate Sri A. K. Chaturvedi assisted by Shri Rajendra Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs: -

- (i) Issue order or direction to quash the punishment order dated 7.8.2009, appellate order dated 21.10.2010 and revisional order dated 26.4.2012 contained in Annexure No. 1, 2 and 3 respectively to this Original Application.



(ii) Issue order or directions to opposite parties to reinstate the applicant with continuity in service treating punishment order as non-existent and to take work of the post of Account assistant and pay salary month to month.

(iii) Issue order or directions commanding opposite parties to pay full pay for the post of Account Assistant from the date of compulsory retirement to date of reinstatement along with all consequential service benefits of seniority, promotion and arrears of salary with 12% interest.

(iv) Grant any relief this Hon'ble deems fit in the facts and circumstances of the case.

2. The facts of the case are that the applicant was initially appointed in the respondents organization was served with a major penalty charge sheet vide charge sheet dated 21.6.2001 wherein, it is indicated that the applicant while he was posted and was functioning as Accounts Assistant in the office of Senior Divisional Accounts Officer, Northern Railway, Lucknow failed to maintain absolute integrity and devotion to duty and committed gross misconduct in as much as he failed to check up the genuineness and continuity of the bogus bills/purchase orders mentioned at Serial No. 1 to 105 while processing the same which resulted in payment of bogus bills and the Railway was put a loss of Rs. 6.38 Lacs. Along with the charge sheet, the statement of imputation along with relied upon documents witnesses are also served upon the applicant. The inquiry officer was appointed. After the completion of the inquiry, the report was submitted and the applicant was issued punishment order whereby, the penalty of compulsory retired was imposed by the Disciplinary Authority. The applicant submitted an appeal and the Appellate Authority has also passed an order on 21st October, 2010 discussing each and every aspect of the case and uphold the punishment of

compulsory retirement imposed by the Disciplinary Authority. It is also advised that he may prefer a revision under Rule 25 of Railway Servant (Discipline and Appeal) Rules 1968 and the same is also considered and rejected by the revisionary authority. The applicant was present in person and categorically pointed out that no proper inquiry was conducted. The applicant has also pointed out that the witnesses were not examined and the document were not provided to the applicant. Apart from this, he has taken a ground of opportunity of hearing and has also pointed out that there is clear violation of Article 311 (1), 311(2), 14, 16 and 21 of the Constitution of India and the applicant was not provided with the relied upon documents by the authorities.

3. Learned counsel appearing on behalf of the respondents filed their detailed reply and through reply, it was indicated by the respondents that after serving with the charge sheet upon the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the applicant submitted reply on 4.7.2001, which was considered and the decision was communicated to the applicant through letter dated 23.4.4.2002 and in which it is categorically indicated that the earlier charge sheet dated 19.6.2001 was withdrawn and the charge sheet dated 21.6.2001 is issued. After the reply received by the applicant, the inquiry officer as well as presenting officer is appointed. Subsequently, the presenting officer was modified through corrigendum dated 29.1.2003. It is also pointed out by the respondents that the inquiry officer was also changed through order dated 25.9.2004 and the new inquiry officer Shri B. L. Matu conducted preliminary hearing on 17.11.2004 and thereafter regular hearing from 21.12.2004 and several dates were given up to 11.2.2005. The applicant also submitted written statement Not

only this, the cross examination/general examination of the applicant was also conducted by the inquiry officer on 1.3.2005. Not only this, it is also pointed out by the respondents that seven prosecution witnesses were examined on different dated and on the basis of the material available on record, the inquiry officer submitted its report dated 19.4.2005 and a copy of the said report dated 19.4.2005 was supplied to the applicant through letter dated 9.6.2005 and the applicant has also submitted representation dated 14.6.2005. The reply submitted by the applicant along with copy of the inquiry officer report, the matter was placed before the disciplinary authority and the disciplinary authority after considering all the material available on record passed the penalty of compulsory retirement through order dated 7.8.2009. The respondents has categorically pointed out that at the time when the charge sheet dated 21.6.2001 was issued at that time the applicant was posted under Senior Accounts Officer (SS&W), Northern Railway, Alambagh, Lucknow and when the punishment order dated 7.8.2009 was awarded, at that time, the applicant was posted under Senior Divisional Finance Manager, Northern Railway, Lucknow Division, Lucknow. Not only this, the respondents have also pointed out that the applicant also filed appeal dated 3.9.2009 against punishment order dated 7.8.2009, which was rejected by the respondents and the decision was communicated through letter dated 21.10.2010 which was received by the applicant on 11.11.2010. Though the applicant had not represented against the appellate order, but his counsel namely Shri Pradeep Sharma, Advocate submitted a representation dated 25.5.2011 under the instructions of the applicant but when the same was not decided, the applicant preferred O.A. No. 3 of 2012 and the Tribunal passed an order dated 5.1.2012 condoning the delay and directed the General

Manager to decide the representation of the applicant. In compliance of the said order of the Tribunal, the General Manager, Northern Railway, New Delhi, decided the representation dated 25.5.2011 through order dated 26.4.2012. The Learned counsel, appearing on behalf of the respondents has categorically pointed out that there is no procedural irregularity in conducting the inquiry as such, any interference by the Tribunal is not warranted. Not only this, the respondents have also taken a plea that the applicant has also submitted an application for payment of retiral dues on 21.11.2010 and all the retiral dues are paid to the applicant. Apart from this, the respondents also taken a ground that the applicant failed to show any rules that has been violated in conducting the inquiry and the orders passed by the disciplinary authority, appellate authority and the revisioinal authority are passed in details as such, no illegality is there in passing order. Not only this, the respondents relied upon decisions of the Hon'ble Apex in the case of **State of Punjab and others vs. Krishan Niwas reported in (1997) 9 SCC 31** and has pointed out that the employee initially accepted the penalty and later on challenged, estoppel will apply. Apart from this, the respondents counsel has also relied upon certain decisions of the Hon'ble Apex Court in the case of **Union of India v. Upendra Singh reported in 1994(3)SCC 357, State of Rajasthan Vs. Mohd. Ayub Naaz, reported in 2006 (1) SCC 589, State of U.P. Vs. Saroj Kumar Sinha, reported in 2010 (2) SCC 772, B.C. Chaturvedi vs. U.O.I. & Ors. reported in 1995(6) SCC 749 , TNCS Corporation Limited vs. K. Meerabai reported in 2006 SCC L&S 265**, and pointed out that the scope of judicial review in the matter relating to the departmental proceedings is limited and the court should not normally interfere where there is no procedural lapses in the enquiry.

4. The applicant is appearing in persons has also filed the rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. Heard the applicant in person and the learned counsel for the respondents and perused the record.

6. The applicant who is working with the respondents organization was initially served with the charge sheet in 1996 which was withdrawn and a charge sheet dated 21.6.2001 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, was issued. In the charge sheet, it is indicated that the applicant while working as Account Assistant in the office of Sr. DAO/NR/LKO during the period 1994-1996, failed to maintain absolute integrity and devotion to duty and committed gross misconduct in as much as he failed to check up the genuineness and continuity of the bogus bills/purchase orders mentioned at serial No. 1 to 105 while processing the same, which resulted in payment of bogus bills and Rs. 6.38 lacs loss to railways. Along with the statement of imputation of misconduct in support of which article of charges framed against the applicant was also mentioned and the 14(Fourteen) relied upon documents along with 10 witnesses were mentioned in the list of witness along with charge sheet. The applicant was given a copy of the charge sheet and thereafter, the inquiry officer was appointed and he conducted the preliminary inquiry. After the preliminary inquiry was conducted by him, and proceeded with the regular inquiry and inquiry officer submitted his report. In the report of the inquiry officer, it is mentioned that the regular hearing was held at Lucknow on different dates and number of witnesses were also examined. The written statement of the charged officer was also received on 22.2.2005 and the cross examination of charged officer by inquiry officer also conducted on 1.3.2005. Not only this, the evidence were also

recorded. The inquiry officer has also categorically pointed out that no defence helper was engaged by the charged officer and finally the inquiry officer has given his finding and has submitted his report and which was duly communicated to the applicant through letter dated 9.6.2005 and was also asked to submit his explanation if he wishes to submit within 15 days. In response to this, the applicant submitted his detailed representation but in the said representation, he has not indicated this fact that he was not given any opportunity of hearing. Apart from this, the applicant has prayed for mercy in his appeal. The matter was placed before the disciplinary authority and the disciplinary authority passed the punishment order dated 7.8.2009 and observed that the applicant was negligent while working which caused loss to the government exchequer as such, the penalty of compulsory retirement with immediate effect was imposed upon the applicant. The applicant submitted the appeal to the appellate authority through his appeal dated 3.9.2009. The appellate authority disposed of the appeal of the applicant dated 21.10.2010 and while disposing of the appeal, it is mentioned by the appellate authority that he has gone through the appeal dated 3.9.2009 against the penalty imposed upon the applicant and while deciding the appeal, it is pointed out by the appellate authority that any person in Accounts is well aware of the fact that the bills are received by CO6 clerk and not by the Bill clerk. Similarly, the direct receipt of these bills by the section officer, should have been brought to the notice of the higher officials. Keeping quite in this matter clearly proves the malafide intention. Apart from this, it is also indicated by the appellate authority that appointment of the enquiry officer is duty of the disciplinary authority and all the 105 bills were passed without internal check by the applicant and issue regarding biasness of

the inquiry officer was never raised by the applicant during the enquiry and the said biasness of the inquiry officer is an after thought. After considering the grounds taken in the appeal, the appellate authority has passed the detailed order rejecting the appeal of the applicant and upholding punishment of the compulsory retirement imposed by the disciplinary authority. The applicant's counsel Shri Pramod Sharma served a notice upon the general Manager, as well as the senior AFA/Administration, on 25.5.2011 when the same was not answered, the applicant preferred O.A. No. 3 of 2012 before this Tribunal and the Tribunal directed the General Manager to decide the representation of the applicant. Accordingly, the General Manager. While passing the order indicted that against the first charge sheet, the applicant has submitted his representation. Since the case was taken by the CBI, subsequently, major penalty charge sheet dated 21.6.2001 was issued and served. There has been formal withdrawal of the earlier departmental major penalty charge sheet in the case which is procedurally prescribed in case of such an eventuality. The charge employee was given ample opportunity to represent his case against the charges framed against him. The General Manager, has also categorically pointed out that the few witnesses expired well before the enquiry was started so it is not possible to call them. The third prosecution witness namely Shri Devindar Singh was a CBI official and it has not been established whether his presence would have assisted in proving or disproving records of Railway offices. The General Manager passed the detailed order and coming to the conclusion that that order imposed by the disciplinary authority is correct and the appellate authority has also after consider all the relevant facts has rejected the appeal of the applicant. Apart from this, there is no procedural irregularity in conducting the inquiry. The

applicant has also participated in the inquiry and was given full opportunity to represent his case. Apart from this, documents were also served upon him. The applicant has also filed additional rejoinder affidavit through which he has annexed the copy of the earlier O.A. No. 3/2012 as well as the order passed by the Tribunal which is also perused.

7. The respondents have also submitted the original record pertaining to the applicant which is also perused. On behalf of the respondents, the schedule of disciplinary powers and powers of suspension of different grades of Railway Officers and Senior supervisors in respect of non-gazetted staff of zonal railways, Chittaranjan Locomotive Works, Diesel Locomotive Works, Integral Coach factory, and other is provided and through which it is categorically mentioned that compulsory retirement, removal from service, dismissal from service can be passed by the appointing authority or an authority of equivalent rank or any higher authority. As regards, the ground taken by the applicant that no documents were given to him and he was not given an opportunity of hearing is not correct. The powers of the inquiry officer is clear to the extent that the applicant was given due documents and he was also given full opportunity of hearing. As such, it cannot be said that there is any procedural irregularity in conducting the inquiry. The applicant has also not raised any objections during the course of inquiry or has given anything in writing to the disciplinary authority or to the appellate authority as such raising any objections at this stage is not maintainable. The applicant was only given the promotion in restructuring scheme as such, it cannot be said that the competent authority has not passed the orders in respect of the applicant.

8 Be that as it may, it is now well settled that the scope of judicial review in disciplinary matters are very limited. The Court or Tribunal can interfere only if there is violation of principles of natural justice or if there is violation of statutory rules or it is a case of no evidence. The applicant could not point out that any provisions of the principles of natural justice have been violated. Neither any ground of non-supply of relied upon documents is taken by the applicant, as such, this Tribunal can only look into that to what extant it can go into the scope of judicial review in the matter of disciplinary proceedings. As stated above it is now well settled the scope of judicial review in a disciplinary matter is very limited. The Court or Tribunal can interfere only if there is a violation of principles of natural justice or if there is violation of any statutory rules or if it is a case of no evidence. **The Tribunal or the Court cannot sit as an appellate authority as observed by the Hon'ble Apex Court in the case of State of Uttar Pradesh v. Raj Kishore Yadav reported in 2006(5) SCC 673.**

The Hon'ble Apex Court has been further pleased to observe as under:-

“4. On a consideration of the entire materials placed before the authorities, they came to the conclusion that the order of dismissal would meet the ends of justice. When a writ petition was filed challenging the correctness of the order of dismissal, the High Court interfered with the order of dismissal on the ground that the acts complained of were sheer mistakes or errors on the part of the respondent herein and for that no punishment could be attributed to the respondent. In our opinion, the order passed by the High Court quashing the order of dismissal is nothing but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal is noting but an error of judgement. In our opinion, the High Court was not justified in allowing the writ petition and quashing the order of dismissal and granting continuity of service with all pecuniary and consequential service benefits. It is a settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order

of punishment of dismissal from service should not be disturbed. As already noticed, the charges are very serious in nature and the same have been proved beyond any doubt. We have also carefully gone through the enquiry report and the order of the disciplinary authority and of the Tribunal and we are unable to agree with the reasons given by the High Court in modifying the punishment imposed by the disciplinary authority. In short, the judgment of the High Court is nothing but perverse. We, therefore, have no other option except to set aside the order passed by the High Court and restore the order passed by the disciplinary authority ordering dismissal of the respondent herein from service.”

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 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 Hon'ble 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. The Hon'ble Apex Court in another decision of **State of UP v. Saroj Kr. Sinha reported in 2010 (2) SCC 772** has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. In the instant case the entire proceedings were carefully considered by the disciplinary authority and full opportunity was given to the applicant in conducting the enquiry and applicant also in his defence submitted the reply etc.

13. 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 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.

14. In the case of **Mani Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** "The procedural fairness in

conducting the departmental proceeding is a right of an employee.” However, in this case the Hon’ble Supreme Court has also pleased to observe that the scope of judicial review in disciplinary proceedings is very limited. The Administrative Tribunals are to determine whether relevant evidences were taken into consideration and irrelevant evidences are excluded.

15. In the case of state of **State Bank of India an Others Vs. Ramesh Dinkar Punde** reported in (2006) 7 SCC 212, the Hon’ble Apex court has been pleased to observe as under:-

“6. Before we proceed further, we may observe at this stage that it is unfortunate that the High court has acted as an Appellate Authority despite the consistent view taken by this court that the High court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.”

Further it has been observed by the Hon’ble Apex Court as under:-

“9. It is impermissible for the High Court to re-appreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.”

16. In the case of state of **Union of India vs. Parma Nanda** reported in (1989) 2 SCC 177 , the Hon’ble Apex court has been pleased to observe as under:-

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the

competent authority either by an Act of legislature or rules made under the proviso to article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

Further in the case of **Chairman and MD, United**

Commercial Bank vs. P.C. Kakkar reported in (2003) 4 SCC

364, the Hon'ble Apex Court has been pleased to observe as under:-

"14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipliner are inseparable from the functioning of every officer/employee of the bank. As was observed by this court in **Disciplinary Authority-cum-Regional Manager Vs. Nikunja Bihari Patnaik** it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting an operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

17. Not only this, it is such a proposition that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary

capacity, the higher degree of integrity and trustworthiness is a must and unexceptionable.

18 As observed by the Hon'ble Apex Court in the case of **Noharlal Verma Vs. district Cooperative central Bank Limited Jagdalpur reported in (2008) 14 SCC 445**, the Hon'ble Apex Court has been pleased to observe as under:-

"The appellant was holding position of trust and was Manager of a Bank. The charges levelled against him were serious in nature concerning misappropriation of money. Though the amount was not big and it was also repaid and the Bank has not suffered, yet the fact is that Manager of a cooperative bank was involved in financial irregularities. The Bank was satisfied that he should not be retained in service and passed an order of removal. It cannot be said that such punishment is grossly disproportionate or excessively high. Normally in exercise of power of "judicial review", a writ court will not substitute its own judgment or decision for the judgment or decision of disciplinary authority unless it comes to the conclusion that it has shocked the conscience of the court or the punishment is such that no "reasonable man" would impose such punishment, or the decision is so absurd that the decision - maker at the time of making the decision "must have taken leave of his senses."

19 The applicant fail to make out any shortfalls in the enquiry proceeding as such, it cannot be said at this stage that the Disciplinary Authority has acted arbitrarily without considering the relevant facts available on record.

20. Considering the submissions of the learned counsel for the parties as well as observations made by the Hon'ble Apex Court, we do not find any justification to interfere in the present case. Accordingly, O.A. is dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)

Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)