

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 595 of 2006

Order Reserved on 24.3.2014

Order Pronounced on 15-04-2014

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

Smt. Jamotri Singh
C/o S. M. Singh,
T-57-A, Semra Colony (Railway)
Gonda.

Applicant

By Advocate Sri M. A. Siddiqui.

Versus

1. Union of India through
The General Manager
North Eastern Railway, Gorakhpur U.P.
2. The D. R. M.
North Eastern Railway
Ashok Marg, Lucknow.
3. The Senior D. C. M.
North Eastern Railway
Ashok Marg Lucknow.
4. The D.C. M.
N. E. Railway Ashok Marg Lucknow.
5. Sr. D. K. Sinha, Retired D. S.T.E.,
through D. C. M. N. E. Railway Lucknow.

Respondents

By Advocate Sri B. B. Tripathi.

ORDER

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

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following relief(s):-

“(a). this Hon'ble Tribunal be graciously pleased to quash impugned order of the disciplinary authority as contained in Annexure A-10 and appellate order as contained in Annexure A-1.

[Handwritten signature]

(b) After quashing annexure A-10 and Annexure A-1, the Hon'ble Tribunal be graciously pleased to direct the respondents to grant all the consequential benefits including revision of pension of the applicant.

(c) Any other relief as considered proper in this circumstances by the Hon'ble Tribunal be awarded to the applicant.

(d) Cost of this application be awarded to applicant."

2. The brief facts of the case are that the applicant is the wife of ex-employee Shri Onkar Singh, who was posted as Commercial Supervisor and died on 14.1.2006 during service period. During the service period of the husband of the applicant, he was served with a charge sheet indicating there in certain charges. There was a list of witnesses and documents were also mentioned. The applicant submitted that her husband was not allowed to participate in the inquiry and the inquiry officer submitted the report and given ex-parte decision of the inquiry officer. The husband of the applicant submitted the representation in 2004 and has also filed an Original Application No. 243 of 2004 with a prayer to issue a direction upon the respondents to complete the inquiry after providing the reasonable opportunity to the applicant. After providing reasonable opportunity of hearing to the applicant, the earlier O.A. was dismissed as the same was rendered infructuous. Since, the inquiry officer completed the inquiry and submitted his report on 31.3.2004 and the copy of which was served to the applicant vide letter dated 6.4.2004. It is also observed in the said order that the disciplinary proceedings culminated into a penalty and the appeal against the same is also pending. Not only this, the applicant has also pointed that the appeal against the order of the punishment is submitted by the husband of the applicant himself on 13th November, 2004. It is also submitted by the applicant that the husband of the applicant was awarded punishment whereby a penalty of reduction to the lower post/grade/service of Commercial Clerk in the scale of Rs. 3200-4900 fixing his basic pay at Rs. 3200/- per month for a period of five years 10 months from the date of the order without postponing future increments. The husband of the applicant appeal was

also considered and decided and duly communicated. The ground of the applicant is that the entire proceedings is ex-parte proceedings and the husband of the applicant was never given any opportunity as such, the same requires interfere by the Tribunal.

3. The learned counsel for the respondents have filed their reply and through reply it was indicated that the two dates for personal hearing on 17.4.2003 and 30.7.2003 were fixed by enquiry officer and applicant was informed about it but he did not attended the enquiry. Subsequently, another date was fixed on 22.8.2003 and the applicant attended the enquiry and thereafter, the next date for regular hearing was fixed on 26.9.2003, 14.11.2003, 12.12.2003, 9.1.2004 and 30.1.2004. Since the husband of the applicant did not attended the inquiry as such, the ex-parte enquiry proceedings were started from 9.1.2004 and the statements of three witnesses were recorded. The applicant was again informed about the date fixed on 30.1.2004 and again he fail to appear and after the number of opportunities given to the applicant, the case was closed from prosecution side and the enquiry officer submitted the report. After submission of the report, the disciplinary authority has also passed the order and the appeal of the applicant's husband was also decided during his life time and the decision was also duly communicated to him. Not only this, the respondents have also denied the receipt of any representation dated 30.9.2005 and it is also pointed out that since the appeal of the applicant was duly received by the ex-employee on 14.8.2005 as such, there was no occasion for the ex-employee to make a representation on 30.9.2005. The learned counsel for the respondents has also filed supplementary affidavit and through supplementary affidavit, the respondents have reiterated the averments made in the counter reply. During the course of arguments, the learned counsel for the respondents relied upon certain decision of the Hon'ble Apex Court such as: **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, Sate 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 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.

3. The applicant filed rejoinder as well as the supplementary rejoinder and through rejoinder and the supplementary rejoinder mostly the averments made in the O.A. are reiterated. The learned counsel for the applicant relied upon two decision of the Central Administrative Tribunal in the case of **Margaret Mary Rozario Vs. Union of India and Others** reported in **(1996) 32 ATC 390** as well as **Latoor Singh Vs. Union of India and Ors. (in O.A. No. 51/1996, Lucknow Bench)** and has pointed out that in the absence of proper and reasonable opportunity to the charged officer, the enquiry is bad in the eyes of law and is liable to be struck down.

4. Heard the learned counsel for the parties and perused the record.

5. Admittedly, the applicant's husband working in the respondents organization was served with the charge sheet on 12.6.2002. In the said charge sheet, it is pointed out that on 22.11.2001, at about 16.15 hrs, when the applicant's husband late Onkar Singh was on duty on reservation counter No. 866, one person not belongs to the Railway Administration named as Nadeem Ahmad Ansari was found working on that seat of the employee. Not only this, the applicant's husband as well as one Nadeem Ahmad Ansari accepted this fact. As such, the charge sheet was served upon the applicant indicating therein the list of witnesses as well as the list of documents. After the issuance of the charge sheet, enquiry officer was appointed and the enquiry officer has also drawn the daily order sheets which contained in CA-1 to the counter reply and through which, it is pointed out that the applicant was given date of personal hearing such as 17.4.2003 and 30.7.2003. Thereafter, 26.9.2003, 14.11.2003, 12.12.2003, 9.1.2004 and 30.1.2004 and when the applicant fail to appear before the enquiry officer and the

enquiry officer was left no other option except to close the case and submit his report. While submitting the enquiry report, he indicated this fact in his report that the charged officer has not asked for any documents or the cross examined of any witnesses and also pointed out that in the case of need, the same would be done subsequently. The enquiry officer has also pointed out that all the relied upon documents were duly received by the charged officer and also indicated the dates on which the charge officer not appear before the enquiry officer. Only the defence assistant appeared on 14.11.2003 and due to non-appearance of charged officer, the enquiry proceedings could not be initiated. In the enquiry report, it is further indicated by the enquiry officer that the applicant was duly communicated about the date in writing and it was also indicated that in the absence of his appearance before the enquiry officer, the case would be proceeded ex-parte and when the applicant fail to participate in the enquiry, the enquiry officer was left with no other option except to proceed ex-parte. The enquiry officer thereafter considered each and every aspect of the matter and examined the witnesses and records and finally came to the conclusion and found the applicant responsible for all the charges leveled against him. After report of the enquiry officer, the disciplinary authority has considered the report of the enquiry officer as well as the other relevant documents and came to the conclusion that the applicant is liable to be punished accordingly an order of penalty of reduction to the lower post/grade/ service of commercial clerk in the scale of Rs. 3200-4900 fixing his basic pay at Rs. 3200/- per month for a period of five years 10 months from the date of the order without postponing future increments was issued. The applicant preferred an appeal against the said order and the said appeal was submitted on 30.11.2004 and the said appeal was also considered and decided by the appellate authority and the appellate authority has passed the orders on 4.8.2005 which was duly served upon the applicant on 14.8.2005.

6. Now the question which requires determination at this stage whether there is any scope for this Tribunal to interfere in the disciplinary proceedings in which, wherein, the applicant was given due opportunity to participate in the enquiry, but he fail to participate. The entire reading of the pleadings, specially report of the enquiry officer shows that the applicant was given due opportunity to participate in the inquiry, but he fail to participate as such, there appears to be no justified reason to interfere in the present O.A. The decision cited by the learned counsel for the applicant are not applicable in this case since, due opportunity was given to the applicant to participate in the enquiry and when he fail to participate despite number of opportunities given to the applicant, the enquiry officer submitted the report.

7. 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 and only if there is violation of statutory rules or it is a case of no evidence. The applicant could not pointed 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 judgment. 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 judgment. 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.”

8. 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.”

9. 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.”

10. 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 his defence submitted the reply etc.

11. 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.

12. 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.

13. The Hon’ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai reported in (2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee.

14. As observed by the Hon’ble Apex Court in the case of **Chairman Cum Managing Director, Coal India Limited and Others Vs.**

Ananta Saha and Others reported in (2011) 5 SCC 142 has been pleased to observed that:

“It is made clear that in case the delinquent does not participate or cooperate in the enquiry, the enquiry officer may proceed ex parte passing such an order recording reasons.”

15. In the case of **State Bank of Mysore and Others Vs. M. C. Krishnappa reported in (2011) 7 SCC 325**, the Hon’ble Apex has been pleased to observe that **“No scope for interference with punishment warranted on a purely subjective view taken by High Court.”**

16. The Hon’ble Apex Court in the case of **Divisional Controller, Karnataka State Road Transport Corporation Vs. M. G. Vittal Rao (2012) 1 SCC 442**, the Hon’ble Apex Court has been pleased to observe as under:

“25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed.

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee(Vide A.P.SRTC Vs. Raghuda Siva Sankarj Prasad).

17. In the case of **State Bank of India Vs. Ram Lal Bhaskar and Another reported in (2011) 10 SCC 249**, the Hon’ble Apex Court has observed as under:

“ Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled

against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct."

18. In another case of **Dy. Registrar, Coop. Societies and Others Vs Bunni Lal Chaurasia** reported in 2006 SCC (L&S) 399, the Hon'ble Apex Court has observed as under:

"We may mention here that the only contention raised in the writ petition was the violation of principles of natural justice in as much as no notice was purported to have been given to him affording an opportunity to explain his case. The contention was repelled by the learned Single Judge that sufficient notices were sent to him by registered post by the appellant but he failed to appear before the disciplinary authority. The learned Single Judge also noticed that on 10.7.1993 the respondent did not appear. Notices were also published in Danik Jagran newspaper on 2.10.1993, 9.10.1993 and 28.11.1993. The respondent also moved as many as three applications on 13.7.1993, 2.10.1993 and 28.11.1993. From the finding recorded by the learned Single Judge, it appears and sufficient opportunity has been afforded to the respondent. Having failed to avail the opportunity, the respondent now is not permitted to turn back to say that no opportunity has been afforded to him.

19. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. Sardar Pahadur** reported in 1972 4 SCC-618, the Hon'ble Apex Court has been pleased to observe as under:-

"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts."

20. On the basis of the observations made by the Hon'ble Apex Court as well as the pleadings of the present case, we do not find any reasons to interfere in the disciplinary proceedings since the ex employee failed to

indicate any lapses or shortfalls in the entire disciplinary proceedings.
Therefore, the O.A. is fit to be dismissed.

21. Accordingly, the O.A. is dismissed. No order as to costs.

J Chandra
(Ms. Jayati Chandra)
Member (A)

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V R Agrawal
(Navneet Kumar)
Member (J)