

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 346 of 2009

Order Reserved on 28.10.2014

Order Pronounced on 20-11-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Chandra Deo Pathak, aged about 54 years son of Sri Tilak Ram Pathak, H-8-B, Liberty Colony Sarvodaya Nagar, Lucknow.

Applicant

By Advocate Sri M. A. Siddiqui.

Versus

1. Union of India through the General Manager, N.E. Railway Gorakhpur.
2. The Chief Operating Manager, N.E. Railway Gorakhpur.
3. The Ad.D.R.M. N.E. Railway, Ashok Marg, Lucknow.
4. The Senior Divisional Operating Manager, N.E. Railway Ashok Marg, Lucknow.

By Advocate Sri D. B. Singh.

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 reliefs:

(a) the Hon'ble Tribunal be graciously pleased to quash disciplinary authority's order dated 28.9.2007 vide Annexure A-6, appellate order dated 2.4.2008 vide Annexure A-8 and Revisionary Authority's order dated 28.8.2008 Annexure A-10 and set aside the punishment to meet the ends of justice.

(b) After quashing A-6, A-8 and A-10 the consequential benefits be granted.

(c) The Hon'ble Tribunal be further pleased to pass order/direction to the respondent to refund Rs. 26286/- with 12% interest till the time of payment.

(d) Any other relief as considered proper by the Hon'ble Tribunal, be granted to the applicant.

(e) Cost of the application be awarded in favour of the applicant.

2. The brief facts of the case are that the applicant joined the respondents organization and was subsequently granted several promotions on account of his work and conduct. At the time of filing of the O.A., the applicant is working on the post of TI (Planning) in the DRM office

Lucknow. While he was working on the said post, he served with a charge sheet dated 18.12.2006. The allegations levelled in the charge sheet shows that the applicant has obtained irregular Railway Privilege passes during the year 2003-2004 in the name of his son Amit Kumar Pathak who was serving as Teacher in Fatima Inter College, Gonda and is being paid salary of a teacher as such, he was not entitled to get privilege passes. Along with the charge sheet, the statement of imputation of misconduct along with the list of documents is also mentioned. The copy of the charge sheet was given to the applicant and after that the inquiry officer was appointed and the inquiry officer has conducted the preliminary inquiry in which, the applicant along with the defence assistants participated in the same.

3. After the appointment of the inquiry officer, the detailed inquiry was conducted and he submitted the report to the disciplinary authority in which, it is indicated that the charges so levelled against the applicant stands proved. The copy of the inquiry report was given to the applicant and in reply to the same, he submitted the representation. The representation as well as the inquiry officer's report was placed before the disciplinary authority and the disciplinary authority through order dated 28.9.2007 passed an order of penalty of reduction to the lower stage of Rs.10150/- to Rs. 9925/- in the time scale of pay of Rs. 7450-11500/-. The said deduction is imposed for a period of one year from the date of the order with postponing future increments. The applicant preferred the appeal and the appeal so preferred by the applicant got rejected by the appellate authority. Not satisfied with the appellate order, the applicant preferred the revision and the revision so preferred by the applicant also got rejected by the revisionary authority. The applicant filed the present O.A. challenging the order passed by the disciplinary authority, appellate authority as well as revisionary authority dated 28.9.2007, 1.4.2008 and 28.8.2008. the learned counsel appearing on behalf of the applicant raised a ground that the maker of the documents is not produced and the order passed by the disciplinary authority as well

as the appellate authority are non speaking order. The learned counsel for the applicant also argued that though the privilege passes were issued but they were never used and the punishment so imposed upon the applicant is too harsh and the respondents fail to establish the use of passes by his son.

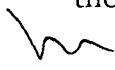
4. On behalf of the respondents, reply is filed and through reply, it is indicated that the applicant's son Sri Amit Kumar Pathak was working with the Fatima School and as per the inquiry conducted by the respondents, it was found that he worked as an adhoc assistant teacher from 1.7.2003 to 10.5.2004 and 5.7.2004 to 12.2.2005. During this period, he was paid salary of Rs. 7000/- in the year 2003-2004 and Rs. 7500/- in the year 2004-2005. Apart from this, it is also pointed out by the learned counsel for the respondents that the applicant obtained privilege passes during the year 2003 and 2004 while his son was working in Fatima Inter College and also getting the salary. It is also indicated by the respondents that the applicant is fully aware about the rules. Accordingly, the applicant is entitled for the punishment as imposed upon him.

5. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

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

7. The applicant was initially appointed in the respondents organization was charge sheeted vide charge sheet dated 19.12.2006 through which it is indicated that the applicant obtained the railway passes during the year 2003-2004 in the name of his son Sri Amit Kumar Pathak who was serving in Fatima Inter College at Gonda and was also getting salary as well. It is also to be indicated that the inquiry was conducted and in response to the said inquiry, the college concerned issued a certificate on 19.5.2006 to the Deputy Chief Vigilance Officer, N. E. Railway Gorakhpur indicating therein that Amit Pathak son of Mr. C. D. Pathak(Applicant) worked as an ad hoc Assistant Teacher from

1.7.2003 to 10.5.2004 and 5.7.2004 to 12.2.2005. Not only this, the Principal of the Fatima School also given a certificate on 6.12.2006. After the service of the charge sheet, the inquiry officer was appointed and the inquiry officer conducted the preliminary inquiry. In the preliminary inquiry the applicant has accepted the service of the charge sheet along with the annexures. Subsequently, number of dates were fixed for the inquiry and the charged officer i.e. the applicant participated in the inquiry. Through letter dated 16.3.2007, the charge officer requested for certain documents and after due deliberations, the request was considered by the inquiry officer. It is also to be indicated that the inquiry office has categorically pointed out that in terms of Railway Pass Rules 1986, the privilege passes are issued for the dependent son up to the age of 21 years and under the exceptional circumstances, the privilege passes are issued (a) unmarried daughters of any age, (b) son of the age of 21 years who is student of any institute and is not getting scholarship/stipend. Not only this, it is also indicated by the inquiry officer that the applicant has given the declaration in the year 2001 to 2006 and as per the said declaration, he has show the age of family members in which age of Amit Kumar Pathak is also shown. The inquiry officer has also indicated that in the year 2003-2004 the applicant obtained the privilege passes in the name f his son as well. After considering all the material available on record, the inquiry officer came to the conclusion that the charges so levelled against the applicant stands proved. The copy of the inquiry report was provided to the applicant and has denied the charges. The copy of the inquiry report along with the reply of the applicant was placed before the disciplinary authority and after considering all the material available on record, the applicant was punished with reduction to the lower stage of Rs.10150/- to Rs. 9925/- in the time scale of pay of Rs. 7450-11500/-. The said deduction is imposed for a period of one year from the date of the order with postponing future increments. The applicant preferred the appeal and the appeal so preferred by the applicant was also considered and rejected



by the appellate authority by means of detailed and speaking order. Not only this, the applicant preferred the review petition and the said review was also dismissed by the revisionary authority on 28.8.2008. While deciding the revision petition the reviewing authority has categorically indicated that no privilege pass can be drawn in favour of employed son by any Railway servant as per Para 2 (d) (III) of the pass rule 1986 which provides as under:-

“Son or sons of the age of 21 and above are included as family members of the purpose of privilege passes provide they are:

(a)bonafide students of any recognized educational institution.

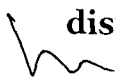
(b)engaged in any research work and do not get any scholarship/stipend.”

8. The issue so raised by the applicant that his son was not a regular employee in the Fatima Inter College and he was only getting some honorarium for doing some project work. The applicant also raised a ground in the revision that the principal of the college was not called during the course of inquiry by the inquiry office as such, he did not get opportunity to cross examine. Here, this is not a question that whether the son of the applicant was regular employee or only getting honorarium. However, the applicant has accepted himself that his son is being paid honorarium for doing some project work at Fatima Inter College and since the pass rules are clear in this respect that privilege pass in favour of a son who is engaged in research work and getting any scholarship/stipend is not legally valid. As the applicant was fully aware about the rules, he should have not applied for the privilege pass in favour of his son who was working as ad hoc Teacher as per the certificate issued by the Principal Fatima Inter College, Gonda.

9. We have considered the rival submissions and perused the record. The question, what is the scope of judicial review in disciplinary matters has come up time and again and there are a catena of decisions on the subject.

10. 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 extent it can go into the scope of judicial review in the matter of disciplinary proceedings. **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 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 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.”



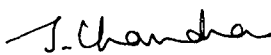
11. The Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** again has been pleased to observe that **"the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence."**

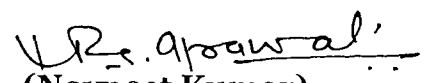
12. In the case of **Moni Shankar v. Union of India & Ors.** reported in **(2008)1 SCC(L&S)-819** "The procedural fairness in conducting the departmental proceeding is a right of an employee." However, in this case the Hon'ble Supreme Court has also pleased to observe that the scope of judicial review 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 norms of judicial review in the matter of disciplinary proceedings and punishments have been well settled. According to those norms, a Tribunal cannot sit as a court of appeal in respect of matter pertaining to disciplinary proceedings particularly when the appellate authority has exercised its power lawfully

14. Considering the law laid down by the Apex Court as well as the material available on record, it is clear that the full fledged inquiry was conducted and the applicant was given full opportunity to participate in the inquiry and after considering all the material available on record, the disciplinary authority as well as the appellate authority passed the orders. As such, we do not find any reason to interfere in the present O.A.

15. Accordingly, the O.A. is dismissed. No orders as to costs.


(Ms. Jayati Chadra)
Member (A)


(Navneet Kumar)
Member (J)

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