IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 22nd day of February, 2010

Original Application No.592/2005

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Chandru V.
s/o Shri Velayouthem,
aged about 46 years,
r/o Railway Quarter No.97/A,
Type-II, Workshop Colony,
Kota, at present working on the post of
Technician Gr.II Spring Maker, Tray
Kota.

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur.

2. Chief Works Manager,
Wagon Repair Shop,
Kota Division,
Kota.

3. Chief Workshop Manager,
Western Central Railway,
Kota Division, Kota

4. Dy. Chief Mechanical Engineer (M&P),
Wagon Repair Shop,
Kota Division,
Kota.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying for the following reliefs:-

> "It is therefore prayed that the order dt. 25.5.2005 (Annex.A/1) may kindly be directed to be modified and orders may be issued to reinstate the applicant in service on the post of Spring Maker Gr.II, the post which he was holding when the memorandum of charge was issued.
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> That the orders of appellate authority dt. 25.5.05, 27.1.05 and 7.7.04 (Annex.A/1, Annex.A/2 and Annex.A/3) may be set aside quash and applicant be reinstate in service with all consequential benefits.
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> Any other order or direction which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, even if the same has not been specifically prayed for, but which is necessary to secure ends of justice may kindly also be passed in favour of the applicant.
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> Cost of the O.A. may kindly be granted."

2. Briefly stated, facts of the case are that the applicant was initially appointed as casual labour in the year 1983. However, after qualifying the skilled test, he was placed in the panel of Hammerman vide order dated 5.8.1988 (Ann.A/6). Subsequently, he was promoted on the post of Technician Gr.II vide order dated 30.1.2002 (Ann.A/4). A chargesheet dated 21.3.2003 was issued to the applicant containing three charges. The charge against the applicant was that after reporting for duty on 13.2.2003, he remained absent till 28.2.2003 and he neither applied for leave nor

any intimation/certificate regarding his sickness is given. The second charge against the applicant was that as per the report submitted by the Thana Incharge, Bhimganj Mandi dated 26.2.2003 and Dy. S.P. Central Circle, Kota City dated 27.2.2003 the applicant was arrested at 4.45 pm on 14.2.2003 for offence under section 147, 148, 149, 308, 331, 341and 323 of IPC read with section 3 of SC/ST Act in FIR No.55/2003 and remained in police custody whereas the applicant in his letter dated 8.3.2003 has informed that he remained in police custody w.e.f. 13.2.2003 to 17.2.2003, as such, he has suppressed the facts deliberately. Third charge against the applicant was that as per the information supplied by the applicant vide letter dated 8.3.2003, he was released on bail on 18.2.2003 and as per report submitted by SSE-Luhar dated 28.2.2003, the applicant was absent from duty w.e.f. 13.2.2003 to 28.2.2008 without any leave whereas he should have given intimation regarding the incident and also resumed duty from 19.2.2003. He neither joined the duty on 19.2.2003 nor intimation was given to the incharge regarding the incident till 28.2.2003. It is on the basis of these three charges that subsequently, enquiry was conducted. Since the applicant did not participated in the enquiry proceedings, the enquiry was held ex-parte and the Enquiry Officer submitted his report thereby holding the applicant guilty of charges. Based upon the report so submitted by the Enquiry Officer, the Disciplinary Authority imposed punishment of removal from service vide order dated 7.7.2004 (Ann.A/3). The appeal filed against the order passed by the Disciplinary Authority was dismissed by the Appeal Authority vide

order dated 27.1.2005 and it was further observed that keeping in view the record of the applicant regarding his past absence, penalty imposed by the Disciplinary Authority is maintained. The applicant filed revision petition before the Reviewing Authority. The Reviewing Authority however vide order dated 25.5.2005 (Ann.A/2) has categorically observed that the applicant is habitual absentee and there is no possibility of his improvement. However, one more opportunity was granted to the applicant by giving him fresh appointment on Class-IV post at Bhopal Workshop. It is on the basis of these facts the applicant has filed this OA for the aforesaid reliefs.

3. The impugned orders are being challenged on the ground that the applicant remained in police custody w.e.f. 13.2.2003 upto 17.2.2003 and during this period he could not inform the authorities and after grant of bail he reported on duty and informed the authorities that he was under police custody upto 17.2.2003, as such he cannot be said to have committed any misconduct. Further ground taken by the applicant is that the enquiry proceedings were erroneously conducted ex-parte and the Appellate Authority has passed the order in violation of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 and further that the railway authorities have taken into consideration the misconduct which was never alleged in the memorandum of chargesheet and therefore arrived at a prejudicial conclusion. The applicant has also alleged that he was appointed on the post of Spring Maker Gr.II by the Deputy Chief Mechanical Engineer, whereas the penalty or removal has been imposed by the Assistant Workshop Manager who is lower

authority, but such contention deserve out right rejection in view of the fact the order has been passed by the Deptuy Chief Mechanical Engineer being the Disciplinary Authority.

4. The respondents have filed reply. In the reply, the respondents have categorically stated that the applicant has failed to inform about his arrest by the police on 14.2.2003 and regarding his custody till 17.2.2003 to the authorities, as such, he is guilty of misconduct. It is further stated that the Enquiry Officer after recording the evidence of prosecution witnesses had concluded the enquiry and found the charges as proved. It is further stated that prior to passing of the order of punishment by the Disciplinary Authority Ann.A/3, the enquiry report was also sent to the applicant by registered AD post which was returned with the remark ' refused', thus, the applicant was well aware about the pendency of the departmental proceedings and despite this he failed to protest against the same at the relevant time. It is further stated that intimation regarding enquiry was given to the applicant thrice by letter dated 30.6.2003, 22.9.2003 and 12.11.2003, therefore, the Enquiry Officer has no option but to proceed ex-parte against the applicant as per DAR Rules. It is further stated that report of the enquiry was also sent to the applicant by registered AD post which was returned with the remarks 'refused'. Thus, the enquiry was held in a fair manner and no infirmity can be found in the order passed by the authority based on enquiry report.

5. We have heard the learned counsel for the parties and gone through the material placed on record. It is admitted fact that the

applicant remained under police custody w.e.f. 13.2.2003 upto 17.2.2003 and he was released from the police custody on 18.2.2003 when he was granted bail. The charge against the applicant is regarding his absence from duty w.e.f. 14.2.2003 onwards till 28.2.2003 when report of his absence from duty was given by the incharge to the higher authorities, about not giving any information regarding the incident after he was released on bail i.e. w.e.f. 18.2.2003 till 28.2.2003. As already stated above, the case of the applicant is that after grant of bail, he returned on duty and informed the authorities but no contemporaneous record has been placed on record. As can be seen from the pleadings made by the applicant in this OA, he himself admitted that he has given intimation for the first time on 8.3.2003 about his remaining under police supervision from 13.2.2003 to 17.2.2003. Thus, the fact remains that the applicant has not given any intimation to the authorities regarding his arrest either w.e.f. 13.2.2003 till 28.2.2003 which is the charge against the applicant. It is also admitted fact that the applicant has also not resumed duty during this period. The so called intimation given by the applicant has been placed on record as Ann.A/7. In fact this is the information as sought by the respondents vide letter dated 3.3.2003 and it was pursuant to such information sought by the respondents that the applicant has stated that he remained under police custody w.e.f. 13.2.2003 to 17.2.2003 and he was released on bail on 18.2.2003. Thus, from the facts as stated above, it is clear that the applicant has not given any information regarding his arrest/incident to the authorities. Thus, the

submissions made by the applicant that he has given intimation regarding incident immediately after he was released on bail to respondent No.2 cannot be accepted.

6. As regards conducting the enquiry ex-parte and not giving adequate opportunity to the applicant to defend the case, from the material placed on record, it is evident that before proceeding ex-parte, the Enquiry Officer has written three letters to the applicant and it is thereafter that the enquiry was held. From the material placed on record it is also evident that the applicant has refused to take delivery of the enquiry report, as such, the Disciplinary Authority has no option but to pass the order removing the applicant from service. From this, it is evident that it was the applicant who was not willing to avail the opportunity as such, he cannot be heard to say that there is violation of principles of natural justice.

7. The matter can also be looked into from another angle. The case as set up by the applicant before the Appellate Authority was that he could not attend the enquiry proceedings as subsequently another false case was registered against him on 9.3.2003 for offence under Section 120 B 323 and 325, 331 and 308 IPC. It is pleaded in the OA as well ground of appeal that he was greatly perturbed by institution of false case and pre-arrest bail was grant to him by the Hon'ble High Court on 25.6.2004. It was for this reason that applicant could not appear in the enquiry proceedings. However, the Appellate Authority has not taken note of this aspect and maintained the punishment as imposed by the Disciplinary

Authority. In this matter the Appellate Authority has also observed in the order that keeping in view the past record of absence of the applicant, the penalty as imposed by the Disciplinary Authority has to be maintained. It appears that the Revising Authority taking into consideration this aspect of the matter that the applicant was evading his arrest in subsequent case has given fresh appointment to the applicant on Class-IV post without setting aside the order passed by the Disciplinary Authority as affirmed by the Appellate Authority. Further, as can be seen from the order passed by the Revising Authority dated 25.5.2005, another reason which appear to have ~~wade~~ weighed with the Revising Authority for not reinstating the applicant or to held fresh enquiry was his continuous long absence, which is to the following effect:-

> 'दिनांक 01.08.2000, 11.8.से 12.08, 07.09, 19.09 से 30.09, 1.10 से 25.10., 03.11, 06.11 से 7.11, 09.11 से 10.11, 06.12 से 11.12, 18.12 से 20.12.2000 तक
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> दिनांक 01.01.2001, 09.01 से 10.01, 29.01 से 08.02.2001 तक, 10.02 से 11.02, 18.02 से 02.04, 2001 तक, 16.4. से 17.04, 26.04 से 27.04, 30.04, 01.05 से 02.05, 04.05 से 31.05,, 01.06 से 30.6.2001 तक
>
> दिनांक 01.01.2002 से 07.01, 17.01 से 19.01, 23.01 से 24.01, 28.01 से 30.01, 16.04 से 30.04, 01.05 से 10.05, 29.07 से 31.07, 01.08 से 31.08, 01.09 से 30.09, 01.10 से 05.10, 21.12 से 23.12, 2002 तक
>
> दिनांक 13.02.2003 से 07.07.2004 तक"

8. At this stage, it may be relevant to state here that service of the applicant was regularized in the railway department after he was put on the panel of Hammerman vide order dated 5.8.98 and he has put in only about a period of four years service as railway servant when chargesheet was issued to the applicant vide

memorandum dated 21.3.2003. It may also be stated here that prior to his empanelment on the post of Hammerman on 5.8.98, the applicant was casual labour with temporary status and cannot be termed to be a railway servant. As already noticed above, for a span of about 4 years, the applicant remained absent for number of days as mentioned above, which fact shows that the applicant is habitual absentee. Under these circumstances, it is not permissible for us to hold that the punishment imposed by the authorities is shockingly disproportionate to the nature of charges found proved against the applicant. The contention as raised by the learned counsel for the applicant that while imposing punishment, his past conduct has also been taken into consideration cannot also be accepted, inasmuch as, the Disciplinary Authority has not taken into consideration his past conduct while imposing punishment. The Disciplinary Authority as well as the Revising Authority has taken note of past conduct of the applicant in order to fortify the reason to impose punishment. It is apparent from the findings recorded by the Appellate Authority that the punishment imposed by the Disciplinary Authority has to be maintained keeping in view his past conduct. Further, the Revisng Authority has also stated the reasons why the applicant cannot be reinstated in service on account of his repeated past absence. Thus, past conduct of the applicant does not form basis for imposing punishment, but as already stated above, the same was taken into consideration for fortifying the reasons in order to examine adequacy of punishment imposed by the Disciplinary Authority.

9. At this stage, we wish to notice decision of the Apex Court in the case of Govt. of A.P. and Ors. Vs. Mohd. Taher Ali, [2007 (8) SCC 656]. That was a case where the Hon'ble Apex Court has rejected the contention that unless the past conduct is a part of chargesheet, it cannot be taken into consideration while imposing punishment. The Apex Court observed that "there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the charge sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often necessary only to reinforce the opinion of the said authority." Thus, the contention raised by the applicant as noticed above, has to be rejected.

10. It is settled position in law that judicial review cannot be permitted against the decision but has to be confined to the decision making process. It is equally well settled that neither court can sit in judgment on merit of the decision nor it is open to the court to re-appreciate and re-apprise the evidence led before the Enquiry Officer and examine the findings recorded by the Enquiry Officer as a court of appeal and reach its own conclusion. In case, if there is some evidence which the authority entrusted with duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of charge, it is not the function of the court to review the evidence and arrive at an independent finding on the evidence. At this stage, it will be useful to notice few decisions of the Apex Court

regarding scope of judicial review in dealing with the departmental enquiries.

In State of Orissa vs. Muldidhar Jena, AIR 1963 SC 404, the Constitution Bench of the Apex Court in para 14 has held as under:-

> "14. there are two other considerations to which reference must be made. In its judgment the High Court has observed that the oral evidence admittedly did not support the case against the respondent. The use of word 'admittedly', in our opinion, amounts somewhat to an overstatement; and the discussion that follows this overstatement in the judgment indicates an attempt to appreciate the evidence which it would ordinarily not be open to the High Court to do in writ proceedings. The same comment falls to be made in regard to the discussion in the judgment of the High Court where it considered the question about the interpretation of the words 'Chatrapur Saheb'. The High Court has observed that 'in the absence of a clear evidence on the point the inference dran by the Tribunal that Chatrapur Saheb meant the respondent would not be justified'. This observation clearly indicates that the high Court was attempting to appreciate evidence. The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the question about the identity of the individual indicated by the expression 'Chatrapur Saheb'. Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment, the High Court appear to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate." (emphasis supplied)

In State of A.P. vs. S.Sree Rama Rao, AIR 1963 SC 1723, a three Judge Bench of the Hon'ble Apex Court in para-7 has held as under:-

> "7..... The High Court is not constituted in a proceeding during Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf,

and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could even have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which cah be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."(emphasis supplied)

The scope of judicial review in dealing with departmental enquiries came up for consideration before the Apex Court in State of A.P. vs. Chitra Venkata Rao, 1975 SCC (L&S) 369 and the Apex Court in para 21 and 23-24 held at under:-

"21. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of

natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have diabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judge of facts and if there is some legal evidence on which their findings can be based, the aqequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Apex Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain the finding. The adequacy or sufficiency of evidence led on a point and the interference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the

evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

11. Thus, viewing the matter in the light of the law laid down by the Hon'ble Apex Court, as reproduced above, it is not permissible for us to interfere in the matter for the reasons as noticed in the earlier part of the judgment and to appreciate the matter again and substitute our decision to that of the authorities. Accordingly, the OA being bereft of merit is dismissed with no order as to costs.

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/