

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

12.10.2011

OA No. 153/2007

Mr. S. Shrivastava, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

As liberty was given to the respective parties, written submissions have already been exchanged by them, and copy of the same have also been filed. Learned counsel for the applicant wants time to study the written submissions filed today by the respondents' counsel.

Put up the matter for remaining arguments / dictation of orders on 19.10.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

19-10-2011
Mr. S. Shrivastava, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents
Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M (A)

K.S. Rathore
(Justice K.S. Rathore)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 19th day of October, 2011

OA No. 153/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

P.D.Chanchlani
s/o Shri Dharm Das
r/o 4/12, S.F.S./Agarwal Farm,
Mansarovar, Jaipur, retired
from the post of AEN (C)
NWR, Jaipur

... Applicant

(By Advocate : Shri S.Srivastava)

Versus

1. Union of India
through General Manager,
North Western Railway,
In front of Railway Hospital,
Jaipur.
2. Secretary,
Ministry of Railways,
Railway Board,
Rail Bhawan,
New Delhi.
3. Chief Administrative Officer (Construction),
North Western Railway,
Jaipur.

... Respondents

(By Advocate : Shri Anupam Agarwal)

ORDER (ORAL)

Brief facts of the case are that the applicant while working as AEN (Track), Jaipur in the year 2001 was entrusted with the charge of maintenance of track between JP-SWM and JP-Bassi Station in Jaipur Division of the erstwhile Western Railway. During the interregnum period of the said work, preventive check was conducted at site on 17.12.2001 by the vigilance of the Railways in presence of applicant as well as CPWI (South) Jaipur wherein they find the material in respect of quality below than the required standard and quantity wise lesser than what was recorded in the concerned Measurement Book.

2. The applicant was served a charge sheet dated 19.1.2004 alongwith the statement of imputation and the list of witnesses. Enquiry was conducted and the Enquiry Officer after having considered the oral and documentary evidence has submitted enquiry report on 24.12.2005 and found the charges as partly proved. The Disciplinary Authority served the applicant with a memorandum of disagreement on 28.1.2006 and the applicant submitted detailed reply submitting regarding defective joint note and wrong appreciation of the statements deposed by the witnesses by the Enquiry Officer to prove the charges partly sans any evidence just on the basis of presumption and probability. The Disciplinary Authority having



considered the submissions made on behalf of the applicant passed punishment order dated 30.1.2006 (Ann.A/1) punishing the applicant with the penalty of reduction to lower stage by ten stages at Rs. 9375/- in existing pay scale of Rs. 8000-275-13500 with cumulative effect, till his retirement.

3. Aggrieved and dissatisfied with the order passed by the Disciplinary Authority dated 30.1.2006, the applicant preferred an appeal before the Board. The Appellate Authority has rejected the appeal filed by the applicant upholding the order passed by the Disciplinary Authority vide order dated 31.1.2007 (Ann.A/2).

4. The present OA is directed against the impugned order dated 30.1.2006 (Ann.A/1) passed by the Disciplinary Authority as well as the order dated 30.1.2006 (Ann.A/2) passed by the Appellate Authority and challenged the aforesaid orders on the ground that the preventive check was conducted on 17.12.2001 by the vigilance of the Railway in presence of the applicant as well as CPWI (South), Jaipur, Shri D.C.Yadav and joint note was prepared in presence of Shri Yadav and the applicant and the applicant was named as witness therein as is evident from joint noted dated 17.12.2001. Further stated that both the applicant and Shri Yadav had made a protest against the defective note prepared by the vigilance team. The respondents used the said joint note against the applicant



to serve the charge sheet dated 19.1.2004 where applicant was named as witness. Precisely the charges were:-

- (a) Shri P.D.Chanchlani has accepted the ballast supply after conducting 100% check on both quantity and quality in which major variations in sieve analysis result and minor variation in quantities were deducted and he has accepted inferior stone ballast with respect to the impact value which ought to have been rejected;
- (b) P.D.Chanchlani has tried to mislead the vigilance department by entering "fictitious" endorsements, apparently on the back date in the M.B. and corresponding contractor bill and did not assist for handing over the M.B. to the vigilance team within the reasonable time.

5. It is also alleged that as per the enquiry report submitted by the Enquiry officer, both the charges were proved partly merely on oral statement of Shri D.C.Yadav and the disagreement note was given by the Disciplinary Authority to prove the charges fully on the ground that findings of the Enquiry Officer in respect of charge no.1 are conclusive and so far as charge no.2 is concerned, the Disciplinary Authority has taken the presumption wrongly that the applicant has withheld the M.B.

6. The applicant while challenging the penalty order dated 30.1.2006 has not only challenged the finding given by the

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Enquiry Officer stating that the findings are based only on oral evidence of Shri D.C.Yadav but also challenged the impugned order on the ground that the applicant had not objected the methodology adopted during the check without taking into account that the applicant was witness in the joint note and not a person against check was made, but the moment joint note used against the applicant then the applicant had objected. The Disciplinary Authority has wrongly observed that correction is made in the measurement book subsequently which was not the part of the charge sheet and more over it is on record that Shri D.C.Yadav had made a correction because being CPWI and it was his job to take measurement and record in the measurement book.

7. It is further submitted that the Disciplinary Authority has erred in observing that non seizure of measurement book by vigilance related to not handing over to the same by the applicant. While in fact, it is being proved from the statement of PW-2 that measurement book is an important document which could not be handed over without demand in writing and no demand in write was made.

8. The applicant also challenged the order passed by the Disciplinary Authority as upheld by the Appellate Authority on the ground that the penalty is so harsh looking to the charges leveled against the applicant and it is also submitted that Shri



D.C. Yadav has been punished with a penalty of compulsory retirement, whereas the applicant has been awarded a penalty of reduction by 10 stages till the retirement, which is disproportionate and not commensurate with the misconduct. Virtually respondents have forfeited 10 years' service as AEN and brought the applicant to the level of CPWI to put the applicant to suffer huge loss in terms of retiral dues and in pension on regular basis, while no loss to public exchequer has occurred. Thus, the Disciplinary Authority has discriminated in awarding punishment to the applicant.

The learned counsel appearing for the applicant in support of his submissions placed reliance on the judgment of the Jodhpur Bench of this Tribunal in OA No.312/2002, Ram Prasad Meena vs/ Union of India and ors., and more particularly referred to para-16 of the judgment. We have carefully scanned the judgment rendered by the CAT-Jodhpur Bench and find that it is not applicable in the facts and circumstances of the present case.

9. On the contrary, the learned counsel appearing for the respondents has submitted that during the vigilance check it is found that inferior stone ballast with respect to the impact value was used and the second charge was regarding misleading the vigilance department and not assisting the vigilance team. The applicant wrongly stated that his reply to



the disagreement note was not considered. Bare perusal of the speaking order (Ann.A/1) refutes such allegations. The competent authority after dealing with the representation specifically recorded in para 4 that 'had vigilance has not checked the ballast, the same would have been paid.... withholding of payment of inferior quality ballast due to intervention of vigilance does not mitigate the gravity of offence.' The findings given by the Enquiry Officer since based upon material placed before it as well as evidence and documents relied upon the parties cannot be said to be perverse or without any basis. The competent authority after consideration of the enquiry report issued disagreement note giving out point of disagreement calling objections as per rules. In response to the same, admittedly, the applicant has represented and only thereafter the order Ann.A/1 was passed which was upheld by the Appellate authority by a speaking order.

10. In support of his submissions the learned counsel appearing for the respondents placed reliance on the judgment in the case of Union of India vs. Alok Kumar reported in 2010 (5) SCC 349 wherein the Hon'ble Apex Court observed that unless de-facto prejudice is proved, the court/tribunal cannot re-appreciate the evidence to come to a different conclusion than that of competent authority. Further, the



scope of judicial review in the case of departmental enquiry is very limited as held by the Apex Court in the case of –

- i) Mohan Lal Verma vs. District Cooperative Central Bank Ltd. reported in 2008 (14) SCC 445;
- ii) State of UP vs. Manmohan Nath SInha reported in 2009 (8) SCC 310
- iii) Punjab and Sindh Bank vs. Daya Singh reported in 2010 (11) SCC 233
- iv) Surendra Kumar vs. UOI reported in 2010 (1) SCC 158.

11. After referring the aforesaid judgments submitted that as per the consistent view taken by the Hon'ble Apex Court, the evidence/proof required to prove the charges need not be as strict as that of criminal case. As such any submissions to the effect that the findings are based upon oral evidence only cannot be faulted and the submissions so made are without any substance.

12. It is further submitted that admittedly joint note was prepared in the presence of applicant and he was signatory of it. Any conclusion, if detrimental to the applicant based upon the same, cannot be challenged on such basis. It is also stated that loss cannot be said to be the criteria to punish a delinquent. Mere misconduct is enough to do so. Quality of



ballast has its own financial implications, as such, intention of the applicant cannot be ruled out and the applicant cannot escape from his responsibility by alleging that the two tests cannot give same result. Further, the Enquiry Officer and the Disciplinary Authority after consideration of evidence of record found the applicant guilty of the charge.

13. The respondents have given much emphasis on the fact that the applicant is not only guilty of misconduct but also guilty of misleading the vigilance and not assisting them which are grave charges, therefore, the second charge has been framed against the applicant. His intention was also found to be not as per conduct rules. Yet the applicant has been punished with the punishment of reduction only, which cannot be said to be harsh or disproportionate so as to call for interference by this Tribunal as held in the case of Praveen Bhatia vs. Union of India reported in 2009 (4) SCC 225 and Charanjeet Lamba vs. Army, Southern Command, reported in 2010 (11) SCC 314. As such, the Tribunal cannot interfere in the quantum of punishment to replace its own view than that of the Disciplinary Authority.

14. Having heard the rival submissions of the respective parties and after perusal of the material available on record as well as the relevant provisions of law and the judgments referred to by the respective parties, it is not disputed that

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preventive check was conducted at site on 17.12.2001 by the vigilance on the work of work order dated 26.9.2001 and the applicant and Shri D.C.Yadav, the then SSE (P.Way) were held responsible for execution of work. In view of the preventive check it is found that sub-standard material was used and the applicant also not cooperated with the vigilance team, therefore, the respondents thought it proper to enquiry into the matter and the Enquiry Officer in its report admittedly found both the charges proved, but the Disciplinary Authority was not agree with the findings given by the Enquiry Officer and a disagreement note was prepared and opportunity was provided to the applicant to represent against the disagreement note. The applicant admittedly, filed a comprehensive representation and having considered the same, the Disciplinary Authority passed the punishment order imposing a major penalty of reduction to lower stage by ten stages at Rs. 9375/- in existing pay scale of Rs. 8000-275-13500 with cumulative effect, till his retirement and the same has been upheld by the Appellate Authority.

15. With regard to irregularity found by the vigilance team during the preventive check and the protest so made by the applicant to the joint note dated 7.12.2001 that the same has not been considered by the competent authority appears to be false. It reveals by bare perusal of the enquiry report and



the order passed by the Disciplinary Authority dated 30.1.2006 that joint note and the protest made by the applicant has been thoroughly considered. The joint note was prepared in the presence of the applicant and he was signatory of it. The Enquiry Officer, a retired Chief Track Engineer having long service in the Engineering Department of Railway and thus was well versed with such type of work, found the applicant guilty of both the charges on the basis of facts and evidence brought on record by the parties and the disagreement note dated 28.1.2006 discloses the sufficient reasons of disagreement.

16. Further, the submission made on behalf of the applicant that the punishment is harsh and disproportionate and not commensurate with the misconduct and that similarly situated person Shri D.C.Yadav was punished with the penalty of compulsory retirement and prayer of the applicant is that same punishment should have also imposed on the applicant, we fail to understand why the applicant is praying for same punishment as has been awarded in case of Shri D.C.Yadav.

17. Having considered the submissions made on behalf of the applicant that same punishment as has been awarded in the case of D.C.Yadav may be awarded, we would like to refer to Rule 40 of the CCS (Pension) Rules dealing with the compulsory retirement and provides that a Government

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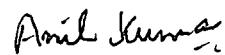
servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of compulsory retirement. If the penalty at par with Shri D.C.Yadav is awarded, in our view, it will be more harsh in comparison to the penalty awarded to the applicant. Therefore, we are not impressed with the submission advanced on behalf of the applicant.

18. We have also considered the judgment relied upon by the respondents. In the case of Union of India vs. Alok Kumar (supra) it is observed by the Hon'ble Supreme Court that the Tribunal cannot re-appreciate the evidence and further the scope of judicial review in the cases of departmental enquiry is very limited in view of ratio decided by the Hon'ble Supreme Court in the case of Mohan Lal Verma vs. District Cooperative Central Bank Ltd; State of UP vs. Manmohan Nath Sinha; Punjab and Sindh Bank vs. Daya Singh and Surendra Kumar Vs. Union of India (cited supra). The Hon'ble Apex Court consistently held that scope of judicial review is very limited to the extent if the applicant is able to make out a case of prejudice, mala-fide or that the departmental proceedings are contrary to the provisions of law. To this extent, the applicant has utterly failed to demonstrate before us that the

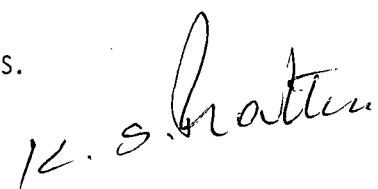


enquiry proceedings, the order passed by the Disciplinary Authority as well as the Appellate Authority are in gross violation of the provisions of law and that the departmental proceedings were initiated malafidely against the applicant.

19. Therefore, in view of the ratio decided by the Hon'ble Apex Court (cited supra), we refrain ourselves to interfere with the impugned orders and the punishment awarded by the Disciplinary Authority and upheld by the Appellate Authority cannot be said to be shockingly disproportionate looking to the seriousness of the charges leveled against the applicant. Consequently, we find no merit in this OA and the same is dismissed being devoid of merit. No costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/