CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060/00246/2014 Orders pronounced on: 29.10.2015
(Orders reserved on: 12.10.2015)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

M.S. Kapoor son of Sh. H.S. Kapoor age 50 years,

presently working as S.O.

under Sr. DFM, NR, Firozpur.

... Applicant

Versus

1. Union of India through General Manager,
   Northern Railway, Baroda House,
   New Delhi.
2. The Additional General Manager,
   Northern Railway, HQ Office, Baroda House, New Delhi.
3. The F.A. & CAO, Northern Railway, HQ Office,
   Baroda House, New Delhi.
4. The Senior Divisional Finance Manager,
   Northern Railway, Ferozpur.

... Respondents

Present: Mr. D.R. Sharma, counsel for the applicant.
Mr. R.T.P.S. Tulsi, counsel for the Respondents.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The challenge in this Original Application is to punishment order dated 22.10.2009 (A-5), appellate order dated 10.12.2010 (A-3) and Revisional Order dated 9.5.2013 (A-1) and inquiry report dated 22.11.2008 (A-7) resulting into reduction of pay of the applicant from Rs.22,390 to Rs.14,100 for a period of 8 years.
2. A charge-sheet dated 24.12.2003 was issued to the applicant under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the charges that while posted as Section Officer during 1999-2001, applicant had committed gross misconduct as he failed to exercise proper supervision over his subordinates and committed offences of criminal conspiracy, cheating, forgery, destruction of evidence and misuse of official position and passed 20 forged bills out of total 71 false bills raised by two non-existing firms favouring Divisional Controller of Stores whereas no stationery material was supplied and thereby cheated an caused wrongful loss of Rs.3,28,587/- in conspiracy with proprietors of said firms and other employees. The total loss was Rs.12,06,543/- but applicant was charge sheeted for Rs.3,28,587/- only relating to him. The applicant prayed for providing 9 additional documents on 12.5.2006 but was provided only 2 documents. He submitted his defence dated 28.9.2006. Written brief by P.O. and defence note by applicant

were also submitted. The inquiry report was supplied to the applicant on 14.7.2009 proving the charges against him. The applicant submitted a representation against the inquiry report on 7.8.2009. The disciplinary authority though noted some of the pleas taken by applicant but without considering the same in right perspective imposed the aforesaid penalty, resulting into reduction of pay of the applicant from Rs.22,390 to Rs.14100 for a period of 8 years. Appeal filed by the applicant was partly allowed by making the penalty to "without cumulative effect". A revision petition was also submitted by the applicant which was dismissed on 1.5.2012, hence the O.A.

3. The respondents have opposed the Original Application by filing a detailed reply. They submit that the disciplinary authority has passed a speaking order awarding the punishment of reduction of pay for 8 years with cumulative effect which has been made without cumulative effect in appeal. The authorities have passed speaking orders. The applicant has failed to supervise his subordinates who have been found guilty of committing various offences by the CBI Court at Patiala in CC No. 8 dated 7.5.2003 decided on 23.3.2009. The I.O. has recorded specific findings against the applicant holding that he was guilty of supervisory failures resulting into the commission of offences by his juniors. They submit that the entire procedure was followed in conducting the enquiry and the punishment imposed

upon the applicant is proportionate to the degree of charge alleged and proved against the applicant and as such no interference is warranted by a court of law.

4. The learned counsel for the applicant vehemently argued that the penalty imposed upon the applicant is disproportionate to the charge levelled and proved against the applicant. Placing reliance on **B.C. Chaturvedi Vs. Union of India & Others**, 1996 AIR 484 and **Syed Rahimuddin v. Director General**, AIR 2001 (9) SCC 575, it is argued that a court of law can interfere in disciplinary proceedings if findings recorded by authorities is without any evidence and perverse. The guilty officials have been visited with lesser penalty for a period of 2 years without cumulative effect and his colleagues S.O. have also been given lesser punishment whereas applicant has been given a harsher punishment which is discriminatory. He has already suffered a lot due to denial of promotion. Penalty can be interfered on the touch stone of article 14 of the Constitution for which reliance is placed upon **Ranjit Thakur vs. Union of India & Others**, (1987) 4 SCC 611. If there is fault in decision making process, court is empowered to interfere. Reliance is placed upon **B.C. Chaturvedi V. Union of India**, 1996 (4) SCT. Once guilty officials are facing charge on criminal case, there is no cause of action to proceed in disciplinary proceedings. The Inspector of CBI has deposed that charges of

offences of criminal conspiracy, cheating, forging, destruction of evidence and misuse of official position etc. be excluded. It is argued that non supply of additional documents asked for by the applicant vitiates the proceedings for which reliance is placed upon O.A.No. 3218/2009 - **Shri Manik Chand Vs. Union of India & Others**, and 452/2002 - **Shri S.C. Gupta Vs. Union of India** decided on 4.7.2011. If a fraud is committed by some other official and a criminal case is going on, the applicant cannot be punished on departmental side. The authorities have failed to consider the grounds raised by the applicant in his appeals / representations and as such orders stand vitiated. The applicant had conducted himself in bonafide discharge of duties as per past practice.

5. Learned counsel for the respondents reiterated the submissions made in the written statement.

6. We have given our thoughtful consideration to the entire matter and perused the material on the file.

7. A perusal of the averments made during the course of written statement and documentation relating to the disciplinary proceedings would disclose that the I.O. has discussed the oral as well as documentary evidence and has recorded categorical finding against the applicant that the fact that the bills were fake as alleged by the prosecution is correct and applicant did not deny passing of hose 20 bills out of 71 fake bills. He also

did not dispute that there is a checklist to process the cases. The applicant admitted d that the bills were passed by different clerks duly checked by him were put up to ADAO/FZR. He has failed to check the bills as per check list and as such he cannot shift his blame upon his subordinates. He failed to produce any evidence regarding his exercising the checks regarding bills and as such the charge has been proved against the applicant. The disciplinary authority passed a detailed order, after discussion of evidence, holding that the charges were proved against him and as such penalty of reduction of pay was imposed with cumulative effect. In this order the defence of the applicant has also been duly taken care of and order has been passed meeting those points. The appellate authority accepted his appeal in part and softened the penalty to "without cumulative effect", though recoding a finding that applicant has not given any facts / defence with reference to the specific charge against him and fraudulent bills that were also incomplete in many respects were passed under his signature and due to passing of fraudulent bills a loss of Rs.43,28,567/- had taken place. The Revisional authority has also rejected the revision petition finding that the applicant had just reiterated the grounds taken before the appellate authority and no new facts were brought to notice which may have an impact on ultimate view taken by the authorities.

8. We do not find any ground or material to record a finding that the finding recorded by the inquiry officer is without any evidence more so when there is admission on the part of the applicant of the fact that bills in question were not processed as per check list resulting into fraudulent passing of bills causing loss to the Railways. There is no procedural irregularity or illegality in conduct of enquiry proceedings nor the impugned orders passed by the disciplinary authority, appellate authority and revisional authority can be termed to be non speaking or not according to rules and law.

9. The applicant has taken a plea that some of the documents asked for by him were not provided to him which has robbed him of an opportunity to effectively defend himself. However, he has failed to indicate any relevancy of those documents or prejudice caused to him due to non supply of the same and in any case there is enough material on record including admission on the part of the applicant to indicate that he had failed to exercise proper checks resulting into commission of fraud.

10. The learned counsel for the applicant argued that the penalty imposed upon the applicant is disproportionate and as such it may be interfered with. The plea, to our mind, is too farfetched as in this case the charges have been proved against the applicant on the basis of evidence and it is not common proceedings. The imposition of penalty on a delinquent

employee is job of the disciplinary authority and in his wisdom the D.A. in this case imposed the penalty of reduction of pay for a period of 8 years with cumulative effect but Appellate Authority found the penalty to be slightly harsh and softened it to "without cumulative effect" and as such we find that the authorities have passed orders with due application of mind. The applicant has been given due opportunity to defend himself by the authorities and we do not find any flaw in the decision making process by the authorities. In view of these facts, the various authorities relied upon by the applicant do not help him at all.

11. Before parting, we may notice certain judicial pronouncements on the issue. It is well settled law that a Tribunal or court of law can interfere in disciplinary proceedings only on limited grounds. The Hon'ble Supreme Court has considered the issue of interference in disciplinary proceedings including penalty in a recent decision of **S.R. Tewari Vs. Union of India & Another**, 2013 (3) SCT 461 and placing reliance on the cases of **B.C. Chaturvedi Vs. Union of India & Others**, AIR 1996 SC 484; **High Court of Judicature at Bombay through its Registrar v. Udaysingh S/o Ganpatrao Naik Nimbalkar & Ors**, AIR 1997 SC 2286 and **Government of Andhra Pradesh & ors Vs. Mohd. Nasrullah Khan**, 2006 (1) SCT 588, it has been held that the Court must keep in mind

that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an appellate authority. Thus, the court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. Placing reliance on a number of decisions qua quantum of penalty, it has been held that the punishment imposed by the disciplinary authority or the appellate authority, unless shocking to the conscience of the Court, cannot be subjected to judicial review.

12. Our own Hon'ble High Court in CWP No.1154 of 2014 (**Union of India & Others Vs. Raghubir Singh & Another**), while examining an order passed by a Bench of this Tribunal on issue of interference in quantum of penalty has held that under the law Disciplinary Authority is the sole repository with whom lies the discretion to decide as to what kind of punishment is to be imposed. The observations being eye-opener are reproduced as under:-

> "Appreciating the arguments of the two sides it needs to be ensured that under the law Disciplinary Authority is the sole repository with whom lies the discretion to decide as to what kind of punishment is to be imposed.
>
> No doubt such a discretion has to be examined objectively keeping in mind the nature and gravity of the

charges and if the Authorities come to a conclusion that a particular penalty specified in the rules was appropriate, it would be highly unjustified and improper for the Tribunal to have interfered in the same. The relationship between an employer and employee is of utmost vital importance and where an employer loses confidence and faith in such an employee and awarding punishment of dismissal/ removal/ termination is the very prerogative of the concerned Disciplinary Authority and there is no place for generosity or misplaced sympathy and therefore, Judicial Authorities needs to be cautious in their approach towards such infringement over the powers of Disciplinary Authority. In the present case, the delinquent official is working with a Post Office where monetary and other important transactions are undertaken and the confidence of the people at large and the public is of utmost importance and therefore, the loss of confidence is one of the primary factors for the Authorities to go into this aspect including the previous conduct of the employee which certainly as is reflected from the record does not augur well for the delinquent official. Nothing could be brought to the notice of this Court how the very inquiry has not been fairly and objectively undertaken by the Authorities. Sh. Namit Kumar, Advocate has placed reliance on Deputy Commissioner, Kendriya Vidyalya Sangthan and others vs. J. Hussain, (2013) 10 Supreme Court Cases 106; U.P. State Road Transport Corporation versus Vinod Kumar, 2008(1) SCC 115 and Union of India and others versus Gyan Chand Chattar, 2009(12) SCC 78 to drive home the point that it was highly uncalled, for the Tribunal to have interfered in these discretionary powers of the Punishing Authority.

This position of law certainly is well settled. To our mind the learned Tribunal has transgressed its powers and has failed to take cognizance of the fact that only Disciplinary Authority had the exclusive power to consider the evidence with a view to maintain discipline and therefore, vests in them right to impose appropriate punishment keeping in view magnitude of the offence and the misconduct. The Tribunal was thus wholly wrong in imposing its own discretion and therefore, has certainly run into an error by setting aside the penalty so imposed by the Disciplinary Authority which cannot by any means be considered to be excessive."

13. Hon'ble Apex Court in the case of **Chandrama Tewari vs. Union of India (Through General Manager, Eastern**

Railway) 1987 (supp.) SCC 518 and **Syndicate Bank vs. Venkatesh Gururao Kurati** 2006 (3) SCC 150, has held that non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent, and the non-supply of only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, would cause prejudice, being violative of the principles of natural justice.

14. The issue of parity in punishment and the manner in which it has to be considered has been well explained by the Hon'ble Supreme Court in **Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad**, (2010)5 SCC 775 holding as under :-

> "15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination."

15. Recently, the Hon'ble Apex Court in the case of **Union of India versus P.Gunasekaran** [2015 (2) S.C.C. Page 610] in paras 12, 13 & 20 has held in regard to circumstances in which a court of law can interfere in disciplinary proceedings in the following words :-

> "12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
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> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> i. the finding of fact is based on no evidence.
> 13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;
(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience.

Xx xx xx

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

16. The guidelines mentioned in the aforesaid dictum are as relevant and useful for adjudication of Departmental Proceedings in Tribunals also as they are for High Courts.

17. We find that the charges have been proved against the applicant on the basis of evidence available on record and it

cannot be said from any angle that the findings recorded by the authorities are perverse. The applicant has been given full opportunity to defend himself in the proceedings. The authorities have passed speaking orders indicating as to how the charges have been proved and as to why there is no merit in the stand taken by the applicant in his defence. The appellate authority and Revisional Authority have also passed orders touching upon the points taken by the applicant in his defence. The applicant has not been able to point out any material irregularity or illegality causing any prejudice to him in the enquiry proceedings and as such the same cannot be interfered with including penalty which is found to be in consonance with the degree of charge alleged and proved against the applicant.

18. In the backdrop of aforesaid discussion, this Original Application is found to be devoid of any merit and as such is dismissed. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh.
Dated: 29.10.2015

HC*