RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 21st day of August 2018.

PRESENT:
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Original Application No. 871 of 20103

Gopal Ji Thakur, aged about 55 years, S/o Late Sheo Bachan Thakur, Ex-Porter, N.C.Railway, Kurusti Kalan, R/o 100-A, Anand Nagar, Naini, Allahabad.

. . . Applicant

By Adv: Shri R.B Napit/Sri Anil Kumar Singh

V E R S U S

1. Union of India through the General Manager, North Central Railway, Head Quarter, Subedar Ganj, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. The Sr. Divisional Operating Manager, North Central Railway, Allahabad Division, Allahabad.
4. The Divisional Operating Manager (Coaching), North Central Railway, Allahabad Division, Allahabad.
5. The Assistant Operating Manager (M), North Central Railway, Allahabad Division, Allahabad.

. . .Respondents

By Adv: Shri A. Tripathi

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Applicant Gopalji Thakur was appointed as a Porter in 1979. He was served with a major penalty charge sheet dated 04.06.2008 (Annexure – A6) by respondent No. 5 alleging

unauthorized absence from duty w.e.f. 16.05.2008. Applicant submitted his representation and defence note to the Enquiry officer who without considering the defence of the applicant submitted his enquiry report dated 19.08.2008 (Annexure-A9) holding the charge leveled against applicant to be proved. Applicant's further case is that the Disciplinary Authority without issuing any show cause notice to the applicant vide dated 30.09.2008/01.10.2008 (Annexure- A1) imposed the penalty of removal from service. Applicant preferred an appeal before respondent No. 4 which was rejected by the Appellate Authority vide order dated 03.12.2008 (Annexure- A2). His revision petition to respondent No.3 was dismissed vide order dated 16.02.2009 (Annexure – A3). His mercy petition was disposed vide order dated 06.12.2012 (Annexure- A4) by respondent No. 4 whereby the order of dismissal from service was modified to compulsory retirement.

2. Applicant by way of present O.A. has challenged all the aforementioned orders on a number of grounds as detailed in his pleading. Applicant has challenged the order of punishment dated 30.09.2008/01.10.2008 (Annexure- A1), Order of appellate authority dated 03.12.2008 (Annexure- A2), order dated 16.02.2009 (Annexure – A3)in his revision petition and modification order dated 06.12.2012 (Annexure- A4).

3. In reply, respondents in the counter-affidavit have controverted the pleas raised by the applicant challenging the correctness of the impugned orders. It has been submitted that all the rules and procedures laid down by The Railways Servants (Discipline and Appeal) Rules, 1968 more particularly Rule 10 were followed by the competent authorities while deciding the case of applicant. All the impugned orders have been passed after observing the principle of natural justice and are reasoned and speaking.

4. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record.

5. It is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is

proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

6. In B.C. Chaturvedi v. Union of India, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as

defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

7. In R.S. Saini v. State of Punjab and ors, (1999) 8 SCC 90, the Hon’ble Apex Court has observed as follows:

"We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to

reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

8. In Government of Andhra Pradesh v. Mohd. Nasrullah Khan, (2006) 2 SCC 373, the Hon’ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by

appreciating the evidence as an Appellate Authority…..”

9. In the instant case, the charge against the applicant being that he was unauthorized absent from duty, misbehaviour, careless working, for loss of railway property stand proved. The applicant duly participated in the enquiry and cross-examined the witnesses examined on behalf of the prosecution. The applicant also submitted his written defence note to the Inquiry Officer. After analyzing the evidence and materials available on record, the Inquiry Officer submitted the inquiry report, vide his report dated 19.08.2008 (Annexure-A9), finding the charge against the applicant as proved.

10. Strangely enough, in his relief the applicant has not made any prayer regarding the report of the I.O. During the course of hearing, learned counsel for the applicant laid much emphasis on the findings of the inquiry. However, from the relief claimed, we find that the inquiry report and the findings recorded therein are not under challenge. The applicant has only sought quashment of the order of penalty and the orders passed by the appellate and the reviewing authorities. In absence of there being any challenge to the inquiry report and the findings recorded therein, it is not permissible in law to examine the validity of the findings of the inquiring authority.

11. After considering the materials available on record including the applicant's representation made against the inquiry report, the Disciplinary Authority, vide order dated 30.09.2008/01.01.2008 imposed upon applicant the penalty 'removal from service'. Again the appeal against the order of Disciplinary Authority, the Appellate Authority disposed of the appeal by a reasoned and speaking order. Applicant has been unable to show any infirmity in the order of respondent No. 3 modifying the order of punishment.

12. The above observations/findings recorded by the Inquiry Officer, Disciplinary Authority and Appellate Authority are based upon evidence/materials, and it cannot be said that there was no evidence before the Inquiry Officer, Disciplinary Authority and Appellate Authority to arrive at the above findings/ conclusions against the applicant. The applicant, in discharge of his duties, was required to discharge his duties with utmost sense of integrity, honesty, devotion and diligence, and to ensure that he did nothing which was unbecoming of an employee/officer of the railway department.

13. Though the inquiry report and the findings recorded have not been challenged, however, the learned counsel for the applicant having argued that the findings are without any

evidence, we did peruse the inquiry report. The charge of unauthorized absence, misbehavior, careless working, irregularity on duty, sleeping on duty, loss of railway property, detention of Rajdhani have been proved against the applicant.

14. At risk of repetition, it may be stated that it is settled law that the Tribunal cannot sit as a court of appeal over the findings of the inquiring authority. The conclusions derived by the inquiring authority are based upon evidence. The adequacy of the evidence cannot be looked into by the Tribunal so long the view of the inquiring authority is one of the possible views. The argument of the applicant’s counsel that the findings are perverse cannot be accepted. It is sought to be argued that the defence was not furnished documents. In this regard, it is pertinent to note that the charged officer has to establish that the documents asked for by him are relevant to the issues involved in the inquiry and non-furnishing of such documents has caused prejudiced to him. Learned counsel for the applicant has not been able to point out any document was asked for and was relevant to the controversy, and its non-production has caused prejudice to the delinquent officer. These findings do not come to the rescue of the applicant, particularly when the inquiry report is not under challenge.

15. As noticed by us hereinabove, there is no perversity in the findings recorded by the inquiry officer. The applicant has neither pointed out the relevancy of the documents not any prejudice having been caused to him. We do not find any violation of the statutory rules. There is no specific allegation of bias against any person warranting interference in the impugned penalty order.

16. Insofar as the appellate order is concerned, it is said to be without reasons. We have perused the orders. The appellate authority has recorded sufficient reasons in its order. Similarly, in revision order also reasons have been recorded. The contention of the learned counsel for the applicant that the orders are without reasons is not correct. Suffice it to say that the administrative authority is not required to write a judgment, as is written by a court of law. The administrative authority, particularly when exercising appellate jurisdiction, is only required to disclose due application of mind to the issues raised, which has been done in the present case.

17. It is argued that the punishment is disproportionate to the charges against the applicant and mercy petition has not been considered properly in reducing the punishment. In Ranjit Thakur v Union of India & others,(1987) 4 SCC 611, the Hon’ble

Supreme Court held as under: “25. .... But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the courtmartial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction....”

18. Insofar as the question of quantum of punishment is concerned, the Hon’ble Supreme Court taking note of various earlier judgments, in Jai Bhagwan v Commissioner of Police [(2013) 11 SCC 187], held as under:

> “10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the

> exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior Courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when Courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court."

19. Thus, it is for the competent disciplinary authority to impose the penalty as may be required on the basis of the material before it. It is not for the court to interfere in the quantum of punishment unless it pricks the conscience of the court and is so disproportionate to the offence committed as to defy prudence. In the present case, we find that major charges against the applicant have been proved. The penalty of compulsory retirement from service under the facts and circumstances of the present case cannot be said to be disproportionate. We do not feel that this is a fit case where

the doctrine of proportionality is attracted.

20. The contention of the learned counsel for the applicant that the inquiry suffers from manifest errors is a general statement. The inquiring authority has discussed the entire evidence adduced before it and thereafter arrived at a particular conclusion holding the charges proved against the applicant. The findings seem to be absolutely logical. The inquiry officer was only required to appreciate the evidence produced before it. It was purely an administrative matter and the inquiry officer has formulated opinion, which is not illogical. No specific instance has been pointed out which may lead to any finding contrary to the facts on record, illogical or perverse. As noticed hereinabove, all these contentions are also otherwise not required to be gone into for the simple reason that there is no prayer for quashing the inquiry report and/or the findings therein.

21. After having given our thoughtful consideration to the materials available on record and the rival submissions, in the light of the decisions referred to above, we have found no substance in the submissions of learned counsel for the applicant.

22. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

23. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-