*Reserved*

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**

**ALLAHABAD**

Original Application No.1180 of 2012

Dated: This the 01st day of November 2018.

**HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**

**HON'BLE MR. MOHD. JAMSHED, MEMBER ADMINISTRATIVE**

A.R. Srivastava aged about 49 years, son of Shri G.P Srivastava, resident of 925/16, Sewa Ram Oil Mill Compound, Civil Lines, Jhansi.

-Applicant

(By Advocate – Shri U. Nath)

Versus

1. Union of India, through General Manager, North Central Railway, Allahabad.

2. Divisional Railway Manager, North Central Railway, Jhansi.

-Respondents

(By Advocate – Shri B. Tiwari)

**ORDER**

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. Applicant A.R.Srivastava filed the present O.A. seeking the following reliefs:

    1) To issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 10.1.2011 (Annexure A-1), dated 4.8.2011 (Annexure A-II), and dated 18.5.2012 (Annexure A-III);
    2) To issue another writ, order or direction in the nature of mandamus thereby commanding the respondents to

restore the pay of the applicant and refund the amount which was recovered from his salary under the impugned order under the garb of punishment order for which a time bound order is fervently prayed;

3) To issue another writ, order or direction in favour of the humble applicant as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case;
4) To award cost of the application in favour of the humble applicant".

2. As per the applicant, while working as Section Engineer (P.Way) U.S.F.D.(Ultrasonic Flaw Detection) Jhansi, applicant was served with minor penalty charge sheet with the allegation that "rail fracture occurred at KM. 1112/5-1115 between KHJ-BJI sections (Down road) on dated 20.11.2010. This location was tested ultrasonically by DRT of USFD Machine on 2.11.2010. The fracture position of rail indicated clear flaw in head which was over looked during testing."

3. It is the further case of applicant that without observing the mandatory provisions of USFD Manual and the bar chart and evidence, the DA vide order dated 10.2.2011 imposed the penalty of reduction to lower stage in the pay scale by one stages for period of two years without cumulative effect. The DA failed to appreciate that in similar case, the penalty of withholding of one privilege pass was upon the similarly situated person by the DA vide order dated 12.3.2012. In appeal, the appellate authority vide order dated 4.8.2011 modified the reduction by 2 stage to 1 stage. The revisionary authority without following the rules and procedure proceeded to upheld the order of the appellate authority.

4. Applicant has challenged the aforementioned orders on the following grounds:

A. The Disciplinary Authority has not given any opportunity to submit his defence evidence.

B. The Appellate Authority has realized the flaw in the punishment order even though instead of quashing the punishment, he simply moderated the period of punishment from two years to one year.
C. The Disciplinary Authority has discriminated the applicant while passing the order as the similarly situated persons have been given very minor punishment of withholding of private pass/PTO though the applicant has been given the severe punishment of reduction in lower stage in the time scale of pay by 2 stages for a period of one year (which was reduced by the appellate authority from 2 stages to 1 stage).
D. The impugned orders deserve intervention under section 19 of Administrative Tribunal Act, 1985.
E. There is clear breach of Article 311 of Constitution of India.

5. In reply, the respondents in their counter affidavit have averred that that the entire disciplinary proceedings against the applicant were conducted as per rules and regulations and the finding as well as the punishment is based on correct appreciation of facts of the case and disposed of by reasoned and speaking order. The averments made by the applicant in the O.A. have been effectively replied by the respondents and there is nothing on record to show that the reply of respondents cannot be relied upon. The settled law is that Tribunal cannot interfere with the finding of punishing authority unless they are arbitrary, malafide or perverse which is not the case in present O.A., as such, the O.A. is liable to be dismissed.

6. In the rejoinder affidavit, applicant has controverted the case of the respondents as coming out in the counter affidavit. Applicants has refuted the facts as averred in the counter affidavit as being wrong and entire disciplinary proceedings were based on wrong facts and all factual and documentary proofs were ignored by the disciplinary authorities.

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

8. 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.

9. 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.

10. 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."

11. In the instant case, the charge against the applicant stands proved that the applicant was guilty of violating the rules and regulation with which he had been charged i.e. Rule 2 (i) and (ii) of Railway Service Conduct Rule 1966. The action of applicant

showed carelessness, negligence and lack of devotion towards his duty.

12. The record reveals all the three authorities after considering the materials available on record including the applicant's representation made against the inquiry report, imposed the punishment upon applicant. Again the appeal against the order of Disciplinary Authority and the revision against the order of appellate authority would show that the said authority disposed of the appeal/revision by a reasoned and speaking orders. Applicant has been unable to show any infirmity in the orders of upholding the order of punishment.

13. The observations/findings recorded by the Disciplinary Authority and Appellate Authority are based upon evidence/materials, and it cannot be said that there was no evidence before the Disciplinary Authority, Appellate Authority and Revisional 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 could be termed as carelessness, negligence and lack of devotion towards his duties.

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.

15. Insofar as the orders under challenge are concerned, they cannot be said to be without reasons. We have perused the

orders. The authorities have recorded sufficient reasons in their orders and considered the stand of the applicant as per his memo of appeal. 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.

16. It was further submitted by the Learned Counsel for the applicant that the other officials of the department who were charged with similar charge were imposed with minor penalty for the same offence whereas applicant has been imposed with harsher punishment. He has thus prayed that the OA be allowed.

17. With regard to the allegation made by the applicant that the other official were also involved in similar offence were imposed with minor penalty whereas the applicant has been inflicted with a heavier punishment cannot be a ground to allow this OA. With regard to award of lesser punishment to others persons involved in the same offence as compared to applicant, the Hon'ble Supreme in the case of Balbir Chand Vs. Food Corporation of India Ltd 1997 (3) SCC 371 has held as under:-

".....It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question. Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they should also be given the lesser punishment lest the same mistaken view would be repeated. Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open

to the appropriate higher authority to look into the matter and taken appropriate decision according to law…."

18. 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 to allow the O.A.

19. 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.

**(Mohd. Jamshed)**
Member (A)

**(Rakesh Sagar Jain)**
Member (J)

Manish/-