

(RESERVED ON 30.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **19th** day of **JUNE 2018**.

ORIGINAL APPLICATION NO. 1505 OF 2009

HON'BLE DR. MURTAZA ALI, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Hasan Raza aged about 57 yrs, son of Late Sahabuddin, Technician Grade III/ T. No. E/1202, N.E. Railway, A.C. Shop, Electric Unit Mechanical Workshop Gorakhpur R/o Village-Govindpur, P.O. Govindpur, District - Deoria.

.....Applicant.

VERSUS

1. Union of India through General Manager, North Eastern Railway, Headquarters Office, Gorakhpur.
2. Dy. Chief Electrical Engineer (Workshop), N.E. Railway, Gorakhpur.
3. Chief Works Manager, Mechanical Workshop, N.E. Railway, Gorakhpur.
4. Chief Electrical Engineer, North Eastern Railway, H.Q. Gorakhpur.
5. Shri Sharda Prasad, the then D.E.E. (Workshop), N.E. Railway, Gorakhpur now posted as Dy. C.E.E. (B.G.) Construction/N.E, Railway, Gorakhpur.
6. Secretary, Railway Board, Rail Bhawan, New Delhi to represent on behalf of President of India, Govt. India, New Delhi

.....Respondents

Advocate for the Applicant : Shri Sudama Ram
Shri Anand Kumar

Advocate for the Respondents : Shri L M Singh
Shri P Mathur

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a) The Hon'ble Tribunal may graciously be pleased to summon the original records/relevant files relating this case and quash and set aside the impugned orders viz., Major Penalty Charge sheet issued dated 10/11.2.2004 by Dy. Chief Electrical Engineer (Workshop), N.E. Railway, Gorakhpur (Annexure A-1), Enquiry Report dated 20.5.2004 (Annexure A-2), order of removal from service passed by Disciplinary Authority vide NIP dated 22/23.07.2004 (Annexure A-3), Appellate Order reducing penalty passed by Chief Workshop

Manager/ N.E. Railway, Gorakhpur vide dated 10/11/01.2005 (Annexure A-4), Revisional order passed by Chief Electrical Engineer, North Eastern Railway, Gorakhpur vide order date 23/24.6.2005 (Annexure A-5), order passed in Review Petition u/r/ 25-A by Chief Electrical Engineer /NER vide his letter No. E/PC/DAR/E/1202 dated 22.8.2006 (Annexure A-6), reply given vide letter dated 17.2.2007 (Annexure A-7) and decision of General Manager, N.E. Railway, Gorakhpur communicated vide impugned order No. E/PC/DAR/E/1202 dated 6.3.2009 (Annexure A-8) given finally and allow this O.A. with all consequential benefits as if no aforesaid penalty were ever imposed against the applicant.

- (b) *The Hon'ble Tribunal may further be pleased to direct the respondents to refund the whole recovery made against applicant on wrong punishment awarded by the authorities under disciplinary proceeding in present case with 12% interest and compensate the applicant by imposing heavy cost for losses and injuries suffered by the applicant.*
- (c) *Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.*
- (d) *Cost of the Application may also be rewarded."*

2. The brief facts of the case as stated in the OA are that while the applicant was working as Supervisor in A.C. Shop (Electrical Unit), Mechanical Workshop, N.E Railway, Gorakhpur, a complaint was lodged by Divisional Electrical Engineer (Workshop) that the north side battery box of Coach No. 11508 ACC-W brought by Train No. 5011 was not correctly fixed. Upon inspection of the Train, it was found that in battery box, out of 16 nut bolts, 3 bolts were not found and four were in bad condition. For this incident the applicant was held responsible and on this complaint the Deputy CEE/Workshop passed an order to issue major penalty charge sheet immediately against the applicant. It is alleged by the applicant that without conducting any preliminary inquiry and without ascertaining the fact whether he had performed the supervision work of the aforesaid work or not, a major penalty charge sheet dated 10/11.02.2004 (Annexure No. A-1 to the OA) was issued against the applicant. It has been stated by the applicant that the battery box loading work of A.C. Coach No. 11508 was not supervised by him as alleged in the charge sheet dated 10/11.2.2004 as the said work was done under the

incentive scheme, where as he was working in non-incentive side. It has also been stated by the applicant that he was on leave when the work of AC Coach no. 11508 was done in the workshop.

3. The applicant submitted his written statement of defence dated 25.02.2004 (Annexure No. A-10 to the OA). It has been alleged by the applicant that the Disciplinary Authority without application of mind towards the facts and details stated in written statement, passed order to hold inquiry and nominated Shri S. N. Rai, Section Engineer (Mechanical Workshop) as Inquiry Officer to conduct inquiry. The applicant denied all the allegations leveled against him in the inquiry vide his statement dated 20.04.2004 (Annexure No. A-11 to the OA). The Inquiry Officer submitted his report dated 20.05.2004 and the Chief Works Manager vide letter dated 02.06.2004 (Annexure No. A-2 to the OA) communicated the same to the applicant. Thereafter, the applicant submitted his representation dated 16.07.2004 (Annexure No. A-14 to the OA) against the inquiry report dated 20.05.2004.

4. Thereafter, vide order dated 22/23.07.2004 (Annexure No. A-3 to the OA), the Deputy Chief Electrical Engineer/Workshop imposed the penalty of removal from service upon the applicant. The Disciplinary Authority also leveled a fresh charge in his order that this is a case of averted accident though it was not mentioned in the article of charge in the charge-sheet dated 10/11.2.2004. The applicant preferred an appeal dated 06.08.2004 against the punishment order (Annexure No. A-15 to the OA) to the Chief Works Manager (Mechanical Workshop) clearly stating that he was not responsible for supervision of battery box loading work in the AC Coach No. 11508 and he was on leave from 21.01.2004 to 24.01.2004. The Appellate Authority after considering the applicant's appeal reduced the

penalty of removal from service to reduction in rank by two grades below in initial grade to Technician Grade III Rs. 3050-4590 fixing his pay @ Rs. 4590/- vide order dated 10/11.1.2005 (Annexure A-4 to the OA), which was communicated to the applicant on 14.02.2005. It has been alleged by the applicant that while considering his appeal, the Appellate Authority made a wrong observation that the applicant was on duty on 19.01.2004 and 20.01.2004 and working of loading of battery box was done on 19.01.2004. The applicant submitted a revision petition under Rule 25 to the Chief Electrical Engineer on 03/04.03.2005 against the appellate order. The Revisionary Authority passed order dated 23/24.06.2005 (Annexure A-5 to the OA), rejecting the revision petition preferred by the applicant. It has been alleged by the applicant that the Revisionary Authority failed to peruse the records and consider the new points raised in the revision petition and that the revision order is highly cryptic, non speaking and unreasoned. Thereafter, the applicant submitted a Review Petition on 26/29.12.2005 (Annexure No. A-17 to the OA) under Rule-25 A of the Railway Servants (D & A) Rules, 1968 to the President of India, but the Revisionary Authority vide order 22.08.2016 withheld the review petition on the ground that the review petition does not qualify to be sent to the Railway Board. On 20.11.2006 (Annexure No. A-18 to the OA), the applicant represented to the General Manager, N.E. Railway against the aforesaid order of withholding of review petition dated 22.08.2006 and in reply vide letter dated 17.02.2007 which was communicated on 26.05.2007 (Annexure No. A-7 to the OA), it was informed to the applicant that the said representation was not addressed to President of India, whereas Review Petition addressed to President of India dated 22.12.2005 was already available with the concerned authorities. The applicant, thereafter, approached the Railway Minister, who vide his letter dated 05.04.2007 asked the Railway Authorities concerned to inquire into the

matter. In pursuance of the letter dated 05.04.2007, the Dy. Chief Electrical Engineer/Workshop vide letter dated 15.06.2007 (Annexure No. A-19 to the OA) nominated the Sr. Section Engineer, A.C. Shop (Electrical Unit), Mechanical Workshop, Gorakhpur to inquire into the matter and apprise the correct factual position. On 21.06.2007, (Annexure No. A-20 to the OA), the Sr. Section Engineer submitted his inquiry report where he held that the applicant was on leave from 21.02.2004 to 24.01.2004 and the battery was loaded on 22.01.2004 as per record. The applicant represented to Chief Electrical Engineer, Gorakhpur on 04.07.2007 and 07.12.2007 in reference to letter dated 05.04.2007 requesting to get the inquiry and investigation done in view of Railway Minister's instructions. When no action was taken by respondents, the applicant again represented to Chief Electrical Engineer on 08.02.2009 and on 19.02.2008, 14.04.2008, 01.09.2008, 10.11.2008 & 19.01.2009 to General Manager. Finally, vide order dated 06.03.2009 the decision of the General Manager was conveyed to the applicant informing that already action has been taken on his appeal and revision petition, for which no further action can be taken in his case. The applicant thereafter, submitted a representation dated 01.04.2009 (Annexure No. A-23 to the OA) to the Chief Works Manager, Gorakhpur requesting to forward his review petition to the Railway Board for consideration on behalf of the President of India. Finally, the applicant filed the instant OA before this Tribunal.

5. In support of his case the applicant has relied on following judgments/orders:-

- (i) Nand Kishore Prasad Vs The State of Bihar and respondents decided by the Hon'ble Apex Court on 09.04.1978 AIR 1978 SCC 1277
- (ii) Kuldeep Singh Vs Commissioner of Police and others decided by Hon'ble Apex Court on 17.12.1998. (1999 SCC (L& S) 429.
- (iii) M.V. Bijlani Vs Union of India and ors decided by Hon'ble Supreme Court on 05.04.2006 (2006 SCC (L&S) 919).

(iv) OA No. 723 of 1986 decided on 10.09.1987 – T. Velayudham Vs The Superintending Engineer, Electricity Department, Pondicherry and Another. [1988] 6 Administrative Tribunals Cases 346

6. The respondents filed counter affidavit in which it is stated that applicant was charge sheeted under Rule 9 for dereliction of duties vide charge sheet dated 10/11.02.2004. A detailed inquiry was conducted and thereafter, order of removal from service dated 22/23.07.2004 was passed. The applicant preferred an appeal which was duly considered sympathetically and accordingly the order of removal was modified to reduction in rank 2 grade below from the pay scale of supervisor to the initial grade of Technician in the grade of Rs. 3050-4590/- fixing his pay at Rs. 4590/- per month. The applicant preferred a revision, which was duly considered by the Revisionary Authority by passing an order dated 22/23.06.2004. It is also stated that the Railway Minister is the reviewing authority of the applicant and as such the representation filed by the applicant did not qualify for being sent to the Railway Board and as such the applicant was apprised of the decision taken by the competent authority vide order dated 22.08.2009. It is further stated that there is no provision for the reviewing authority to consider new facts and pleadings which is against the record since the applicant had already been provided all reasonable opportunity during the proceeding. It is further submitted that the Inquiry Officer on the basis of the statement and other corroborative documents which specifically connects the applicant for such dereliction of duties as admittedly on the date when the Battery Box was loaded on Coach No. 11508 the applicant was very much present on duty. Apart from the other staff, it was the supervisor who gives a fitness certificate before putting the train on line for further journey. It is also stated that the OA is not maintainable as the applicant in pursuance of

the order passed by the revisionary authority was reinstated and the applicant has finally accepted the orders.

7. Learned counsel for the applicant filed rejoinder affidavit basically reiterating the facts stated in the OA.

8. Heard learned counsels for both the parties. The applicant's counsel submitted that the applicant was not present when the battery box was being loaded, hence, it was not correct to fix responsibility for improper fixing of the nuts on the applicant. It was further submitted that the revision order was non-speaking order. On the ground of delay in filing the application, the applicant's counsel cited the judgment in the case of Ram Singh (supra), which held that there is no limitation for challenging a void order. Learned counsel for the applicant also cited the judgment of CAT, Madras Bench in the case of T. Velayudham (supra), in which it was held that the applicant could move a revision or review petition to the President under the rule 29 of the CCS (CCA) Rules, 1965.

9. Learned counsel for the respondents reiterated the points mentioned in the Counter affidavit. He also filed written submission reiterating the facts stated in the counter affidavit. In the written submission the respondents have relied on following judgments:-

- (i) Tata Cellular Vs Union of India, AIR 1996 SC 11.
- (ii) Government of Andhra Pradesh & Ors Vs Mohd. Nasrulla Khan, AIR 2006 SC 1214.
- (iii) State of Orissa & Ors. Vs. Md. Illiyas, (2006) 1 SCC 275,
- (iv) Rae Bareily Kshetriya Gramin Bank Vs Bhola Nath Singh & Ors, (1997) 3 SCC 657.
- (v) Registrar Vs Uday Singh s/o Ganpatrao Niak Nimbalkar & Ors, AIR 1997 SC 2286.

10. The findings of the inquiry report dated 20.05.2004 (Annexure A-2) are the following:-

- Sri Hasan Raza did not fix the battery box of the coach number 11508 properly as he did not fix four nuts correctly and there were three missing nuts, which was detected during checking in the washing pit on 5.2.2004. In his statement, Sri Das stated that as he was on leave from 21.1.04 to 24.01.04, another supervisor Sri Ramsundar was responsible for the lapse.
- Sri Raza was instructed by the authority for doing the work and he had done it earlier also. Sri Ramsundar was in charge of the gang, which was responsible for unloading and loading of the batteries from the battery box and he was not concerned with loading of the battery box.
- The statement of the charged officer that he was on leave from 21.1.04 to 24.1.04, which was correct, but the loading of the battery box of the concerned coach was done on 19.01.2004 as per the application.
- It was explained by the defence assistant that the defect in loading of the battery box may be due to technical reasons. The Inquiry Officer mentioned that although the defects detected are possible due to technical reasons, but it generally does not take place for technical reasons as stated by the applicant.
- The applicant, as supervisor of the gang responsible for loading of the battery box, cannot be free from responsibility for the lapses.

11. The disciplinary authority in his order (Annexure A-3) has stated the following points:-

- Agreeing with the report of the Inquiry Officer, the punishment of removal from railway service is awarded to Sri Hasan Raza.

12. The Appellate Authority in his order dated 10/11.01.2005 (Annexure A-4) has stated the following points:-

- On 4.02.2004, it was detected during inspection of the train no. 5011, coach no. 11508 that four nuts of one battery box were in bad condition and three nuts were not there. This work was supervised by Sri Hasan Raza, who was a supervisor in the battery loading section in the workshop. This work was executed on 19.01.2004 under his supervision, as revealed during reply given by Sri Raza to the Inquiry Officer.
- Hence, Sri Raza had been irresponsible and negligent while supervising this work, for which he is removed from supervision duty by reducing his rank to from Supervisor with pay scale of Rs. 4500-7000 to the Technician Grade-III at the maximum of Rs. 4590/- in the pay scale of 3050-4590, in place of the punishment of 'removal from railway service'.

13. The order of the Revisionary authority, i.e. the Chief Electrical Engineer was communicated vide order dated 23/24.06.2005, which stated the following:-

- The revision petition and all connected records were considered. The charges have been proved against the charged officer. The appeal has been sympathetically considered and the punishment has been substantially reduced and the reduced punishment is upheld.

14. The Review petition of the applicant was not forwarded by the respondents to the Railway Board/President of India, vide order dated 22.08.2006 (Annexure A-6), since the prescribed authority, i.e. Chief Electrical Engineer (respondent no.4), was of the view that no new fact has come to light, therefore, the representation of Shri Hasan Raza does not qualify for sending it to the Railway Board.

15. We have considered the submissions and pleadings submitted by both the parties. Before we consider the merit of the case, the delay condonation application filed by the applicant needs to be considered first. The grounds mentioned include the reason that the applicant's review application was not forwarded vide order dated 22.8.2006 (Annexure A-6), for which the applicant submitted representation to the General Manager, who finally replied on 6.3.2009 (Annexure A-8), which has been impugned in this OA within time. Hence, the reasons mentioned for delay, are found to be satisfactory and the delay, if any, in filing the OA is condoned.

16. Regarding the merits of the case, it is necessary to determine whether the plea of the applicant that he was on leave during the period when the AC battery box in question was loaded in the concerned coach can be accepted. In the inquiry report and in the Counter reply, it is mentioned that the loading of the battery box happened on 19.1.2004, when the applicant was on duty. The applicant, in para 11 of the Rejoinder, has denied this contention and has averred that the said battery box was loaded between 21.1.2004 to 24.1.2004 when he was on leave during that period and the other supervisor, Shri Ram Sundar was

on duty, for which, he was also awarded a minor penalty for the alleged misconduct. Applicant's contention in para 4.23 of the OA is that as per the report of the Senior Section Engineer dated 21.6.2007, the battery of the coach in question was loaded on 22.1.2004, when the applicant was on leave. In reply, the respondents in the Counter reply para 19 have denied the contention, stating that the report of the Senior Section Engineer dated 21.6.2007, is not based on any documentary evidence and it cannot be relied upon. The findings of the Inquiry Officer appointed as per the rules, have been accepted by the respondents. The perusal of the report dated 21.6.2007 (Annexure A-20) states that no record was available indicating the date on which the battery box was loaded. But the report of the Inquiry Officer stated that as per the SSE/AC register, the said battery box was loaded on 19.1.2004. Thus, there is a discrepancy between the report dated 21.6.2007 and the report of the Inquiry Officer in this regard. It is stated in para 4.6 of the OA that the coach was in the Paint shop on 19.1.2004 and it is incorrect to say that the battery box was loaded on 19.1.2004 and this averment has not been specifically contradicted in the Counter reply of the respondents.

17. As per the inquiry report, the coach in question finally came out of the workshop on 24.1.2004, when the applicant was admittedly on leave. The defects in fixing nuts on the battery box should have been detected at the time of the passing of the coach from the workshop on 24.1.2004. Clearly, there was negligence of the supervisor who was in charge of the battery box as on 24.1.2004, when the coach was finally taken out of the workshop. It is stated in the OA that disciplinary action was also taken against Shri Ram Sunder, who was in charge of the battery box on 24.1.2004, who alongwith his gang members were punished with minor punishment as stated in para 5(u) of the OA. These averments of the

applicant in para 5(u) of the OA have not been specifically contradicted by the respondents in their pleadings. Hence, it would appear that for the same charges, Shri Ram Sunder, as supervisor, has been punished with minor punishment. He was the supervisor at the time of final clearing of the coach on 24.1.2004, when the coach was taken out of the workshop after completion of the work. Hence, the charge against the supervisor who had supervised before final clearance of the work in question after completion, is equally serious, if not more than the charge against the applicant, who had supervised the work on 19.1.2004 and the work had continued in the workshop after 19.1.2004, till the coach was finally cleared from the workshop on 24.1.2004. The contention of the applicant is that since the other supervisor (Shri Ram Sunder) was punished with minor penalty for the same or similar charges, the applicant should not have been punished again. This averment is not acceptable as both the employees can be responsible for the same charge, if both of them had attended to the work.

18. It is noticed that the applicant has been awarded a penalty of reduction in rank by two levels from Supervisor to the level of Technician Grade-III and was not restored to his erstwhile position till his retirement. Hence, the punishment affected the pensionary benefits of the applicant, for which, it is a major punishment in terms of the rule 6(v) of the Railway Servants (Discipline & Appeal) Rules, 1968. But for the same or similar charges, other supervisor, who was also found guilty and whose lapses were equally serious compared to the lapses of the applicant as discussed above, has been punished with a minor penalty. The reasons for treating both the cases differently have not been explained in the pleadings of the respondents.

19. We also take note of the limited scope of judicial review of the disciplinary proceedings by the Courts as laid down by Hon'ble Supreme Court in a number of cases. Hon'ble Supreme Court in the case of **S.R. Tewari vs. Union of India 2013 (7) Scale page 417** has held that:-

"The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. 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. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice."

20. In the case of **Union of India Vs. P. Gunasekaran 2015 (2) SCC page 610** in para 12 Hon'ble Supreme Court has held as under:-

"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:

- a. *the enquiry is held by a competent authority;*
- b. *the enquiry is held according to the procedure prescribed in that behalf;*
- c. *there is violation of the principles of natural justice in conducting the proceedings;*
- d. *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

- 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;*
- g. *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. *the finding of fact is based on no evidence."*

21. In the case of **B.C. Chaturvedi vs. Union of India & Ors. 1995 (6)**

SCC 749, Hon'ble Supreme Court has observed as under:-

"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 the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are 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 officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its 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 or 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."

22. The judgment in the case of *Tata Cellular* (supra) cited by the respondents' counsel, Hon'ble Apex Court held as under:-

"77. The duty of the court is to confine itself to the question of legality. Its concern should be :

- 1. Whether a decision-making authority exceeded its powers?**
- 2. Committed an error of law,**
- 3. committed a breach of the rules of natural justice,**
- 4. reached a decision which no reasonable tribunal would have reached or,**
- 5. abused its powers.**

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

.....

(i) Illegality : This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesday unreasonableness.

(iii) Procedural impropriety."

From above, it is clear that the judicial review of an administrative decision would be justified, if the decision taken is irrational or unreasonable.

23. In the case of *Andhra Pradesh & Ors vs. Mohd. Nasrulla Khan* (supra), Hon'ble Apex Court upheld the punishment of dismissal from service quashing the order of High Court, since the misconduct/lapse on the part of the employee was serious, which could have resulted in serious incident. But in this OA, the chargesheet or the report of the Inquiry Officer does not indicate whether the lapses of the applicant could have resulted in serious accident and for same or similar charge, another

supervisor has been awarded minor punishment as stated in para 5(u) of the OA. The facts and circumstances of the OA are different from the cited case. In the case of Md. Illitas (supra) cited by the learned respondents' counsel, the action of the State Government against the Sarpanch was upheld in view of the seriousness of the charge. This case is also factually distinguishable from the present OA.

24. In the case of Rae Bareily Kshatriya Gramin Bank (supra), Hon'ble Apex Court quashed the Court's order appreciating the evidence as an appeal court and held that the scope of judicial review is limited to correct error in law or procedural error leading to injustice. In the case of Uday Singh (supra), Hon'ble Apex Court held as under:-

"Under these circumstance, the question arises: whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all ? From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is: what would be the nature of punishment to be imposed in the circumstances? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference."

In above case, the punishment of dismissal from service was found to be justified considering the facts of the case. This case of Uday Singh (supra) is distinguishable from the present OA, where for the same or similar charges another supervisor, who was also responsible for final repair of the battery box/coach in question, was awarded less severe punishment compared to the applicant as stated in para 17 and 18 above.

25. As discussed in para 17 and 18 of this order, the applicant has been awarded a major penalty of reduction in rank by two levels from Supervisor to the level of Technician Grade-III, affecting his pensionary benefits. Hence, under the rules, it is major punishment. But for the same or similar charges, other supervisor (Shri Ram Sunder) was also found guilty as he had supervised the work till the coach was finally cleared from the workshop after the applicant proceeded on leave. Shri Ram Sunder had supervised the work till the end of all works for the coach and he was punished with a minor penalty only as stated in the OA. No reason has been furnished in the pleadings of the respondents for treating the case of both the supervisors differently. It is clear that inflicting major penalty for same or similar charges against the applicant as that of Shri Ram Sunder is discriminatory and grossly disproportionate to the charges proved against the applicant, taking into account the fact that Shri Ram Sunder, who had supervised the work in question in the workshop at final stages of the repair work, was punished with a minor penalty, whereas the applicant was punished with a major penalty. Even if Shri Ram Sundar is not responsible for the lapses as stated in the OA, the respondents are silent about the supervisor, who is responsible for inspection and clearance of the coach from the workshop on 24.1.2004.

26. It is noted that as stated in para 4.6 of the OA, two prosecution witnesses i.e. Shri SK Gupta and Shri RP Yadav, in their statements before Inquiry Officer (Annexure A-13), have stated that the AC coach in question was in the Paint shop till 20.1.2004 and it was brought to the AC Shop on 21.1.2004. This appears to be corroborating the contention of the applicant that the battery box was not loaded in the AC coach in question on 19.1.2004 as stated in the Inquiry report (Annexure A-2). The respondents, in their Counter reply, have not specifically denied these

specific averments in para 4.6 of the OA. Further, as per the letter dated 21.6.2007, there is no record available to show the date of loading of the battery box. This is contrary to the finding of the Inquiry Officer that as per SSE/AC register, the battery box was loaded on 19.1.2004.

27. Further, the contention of the applicant in para 5 of the OA that the orders of the disciplinary authority and appellate authority are non-speaking and unreasoned orders, appears to have some force. The order dated 23.7.2004 (Annexure A-3) of the disciplinary authority has not discussed the reasons for which the punishment of removal from railway service was imposed on the applicant. It did not discuss the past conduct of the applicant and the seriousness of the charges proved before imposing the penalty of removal from service. The appellate authority, under the rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 is required to examine whether the findings of the disciplinary authority are warranted by the evidence on the record, whether the procedure laid down under the rules have been followed and whether the penalty imposed is adequate or severe. The applicant in his appeal dated 6.8.2004 (Annexure A-15) had raised the issue of minor punishment imposed on Shri Ram Sundar. But the order dated 10/11.1.2005 (Annexure A-4) is silent on these aspects, for which it cannot be sustained under law.

28. In view of above discussions and as per the ratio of the judgment of Hon'ble Apex Court in the case of B.C. Chaturvedi (supra) and in other cases as discussed above, this Tribunal will be justified to judicially review the present disciplinary proceedings against the applicant in the interest of justice. Normally we would have quashed the punishment order and remitted the case to the disciplinary authority (respondent no. 2) to reconsider the case in accordance with the provisions of the Railway

Servants (Discipline and Appeal) Rules, 1968 taking into account the observations made in this order and to pass an appropriate order. But in this case, the applicant is already retired from service since long and as discussed in para 26, the finding of the Inquiry Officer that the battery box was loaded on 19.1.2004 is questionable. Further, as stated in the Rejoinder filed by the applicant, Shri Ram Sunder was given minor punishment of suspending three railway passes for same or similar charges, without any implication on his salary. In the circumstances, the chargesheet against the applicant as well as the findings of the Disciplinary Authority and the Appellate Authority imposing the impugned penalty on the applicant are perverse and contrary to the facts on record. Accordingly, the chargesheet dated 10/11.2.2004 (Annexure A-1), the order dated 22/23.7.2004 (Annexure A-3), the order dated 10/11.01.2005 (Annexure A-4), the order dated 23/24.06.2005(Annexure A-5), the order dated 17.2.2007 (Annexure A-7) and the order dated 6.3.2009 (Annexure A-8) are set aside and quashed. We would not like to remit the matter to the respondents for fresh consideration as it would further delay the matter. Therefore, the respondents are directed to extend all consequential post retirement benefits to the applicant and refund the amount recovered from the applicant in pursuance of the penalty order, since the chargesheet and the penalty orders are quashed. It is, however, clarified that the applicant will not be entitled to any arrear salary by virtue of this order.

29. The OA is allowed in terms of the above directions. No order as to costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

**(DR. MURTAZA ALI)
MEMBER-J**