

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.102 OF 2013

New Delhi, this the 22nd day of March, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Khushnaseeba,
W/o Late Shri Anees Ahmed,
Ex-Trolleyman,
Under SSE (PWI), Northern Railway, Bijnor,
R/o Quarter No.20-A,
Railway Colony, Railway Station, Bijnor (UP)
2. Shri Irfan Ahmed,
s/o late Shri Anees Ahmed,
Ex.Trolleyman,
Under SSE (PWI),
Northern Railway, Bijnor,
R/o Quarter No.20-A,
Railway Colony, Railway Station, Bijnor (UP)
3. Shri Ahsan Ahmed,
s/o late Shri Anees Ahmed,
Ex.Trolleyman,
Under SSE (PWI),
Northern Railway, Bijnor,
R/o Quarter No.20-A,
Railway Colony, Railway Station, Bijnor (UP)Applicants.

(By Advocate: Ms.Meenu Mainee)

Vs.

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Manager,
The Office of DRM Office,

- Northern Railway, Moradabad.
3. Shri Manish Kumar,
Assistant Engineer, Northern Railway,
Najibabad.
4. Shri Sukhveer Singh,
Senior Selection Engineer,
Northern Railway, Moradabad Division,
Najibabad Respondents

(By Advocate: Mr.V.S.R.Krishna)

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ORDER

Per Raj Vir Sharma, Member(J):

Brief facts giving rise to the present OA are as follows:

1.1 Applicant no.1 is the widow, and applicant nos. 2 and 3 are sons of Mr.Anees Ahmed. Mr.Anees Ahmed was working as a Trolley Man under the Section Engineer (Permanent Way), Northern Railway, Bijnor. The Assistant Divisional Engineer, Northern Railway, Najibabad (hereinafter referred to as 'Disciplinary Authority'), issued a charge memo, dated 18.6.2005, initiating a major penalty disciplinary proceeding against him. As per the statement of article of charge and the statement of imputation of misconduct or misbehaviour in support of article of charge, which were enclosed with the charge memo dated 18.6.2005 (ibid), he had been on 'unauthorized absence from duty since 30.3.2005' and before this also, he had 'not been performing his duty properly'. The Enquiry Officer (hereinafter referred to as 'E.O.') conducted the departmental

enquiry and submitted his report holding the charge as proved against him. The Disciplinary Authority, vide his letter dated 11.2.2008, forwarded to him a copy of the inquiry report for making representation against the same. Accordingly, he submitted a representation on 26.2.2008 against the inquiry report and prayed for recalling of the charge memo. Thereafter, the Disciplinary Authority passed an order dated 9.4.2008 (Annexure A-1B) imposing on him the punishment of removal from service. On his behalf, the Northern Railwaymen's Union made an appeal dated 14.4.2008 (Annexure A-11) to the Railway Divisional Manager, Northern Railway, Moradabad Division, questioning the Disciplinary Authority's order. The said appeal was followed by two more additional appeals/representations submitted by him to the Senior Divisional Engineer, Northern Railway, Moradabad (hereinafter referred to as Appellate Authority) on 9.1.2009 and 28.4.2009 (Annexure A-15 & Annexure A-16 collectively). The Appellate Authority, vide its order dated 12.5.2009 (Annexure A-1C), dismissed the appeal and upheld the Disciplinary Authority's order. Consequently, the Section Engineer (PW), Northern Railway, Bijnor, vide letter dated 23.5.2009 (Annexure 1-D), directed him to vacate the Railway accommodation.

1.2 Challenging the orders passed by the Disciplinary Authority and Appellate Authority, and the letter/notice issued by the Section Engineer (PW), Northern Railway, Bijnor, he filed OA

No.2642/2009 before the Principal Bench of the Tribunal. During the pendency of the said O.A. before this Tribunal, he passed away on 20.7.2010. The Tribunal disposed of the said O.A. by order dated 19.12.2011, the operative part of which reads thus:

“13. Thus, we are of the view that the impugned order passed by the appellate authority is required to be quashed. We order accordingly. Matter is accordingly remitted to the appellate authority to pass an appropriate order on the appeal of the deceased employee without taking into consideration his past attendance record and taking into consideration the defence taken by the deceased in his appeal. Since we have not gone into the merits of the case, other questions raised by the deceased employee in this OA have been left open.”

1.3 In pursuance of the Tribunal's order dated 19.12.2011 (ibid), the Appellate Authority reconsidered the appeal and passed order dated 21.2.2012 (Annexure A-1A), whereby the punishment of removal from service was reduced to that of compulsory retirement from service and it was stipulated that the period of unauthorized absence from 30.3.2005 to 9.4.2008 shall be treated as Extraordinary Leave.

1.4 Assailing the above Appellate Authority's order dated 21.2.2012, applicant No.1 filed a revision petition before the Divisional Railway Manager, Northern Railway, Moradabad (hereinafter referred to as 'Revisional Authority'). The said revision petition was rejected by the Revisional Authority, vide its order dated 15.3.2013 (Annexure A-1A).

1.5 Hence, in the present O.A., the applicants prayed for the following reliefs:

“8.1 That this Hon’ble Tribunal may be graciously pleased to allow this application and quash the impugned orders dated 21.02.2012 (Annexure A/1A) order dated 9.4.2008 passed by the Assistant Engineer, Northern Railway, Bijnor (Annexure A/1B), order dated 12.5.2009 passed by the Senior Divisional Engineer, Northern Railway, Moradabad (Annexure A1C), order dated 23.5.2009 passed by the Senior Engineer (P.Way), Northern Railway, Bijnor (Annexure A/1D), order dated 15.3.2013 passed by D.R.M., Moradabad (Annexure A/1E) directing the respondents to treat the period of alleged unauthorised absence as period spent on duty for all intent and purposes with all consequential benefits; & (ii) Direct the respondents to grant all consequential benefits, including arrears of pay and allowances and other benefits as well as interest at the rate of 9% per annum on the amount which had been illegally withheld;

8.2 That this Hon’ble Tribunal may be pleased to grant any other or further relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8.3 That the cost of these proceedings may kindly be granted in favour of applicants.”

1.6 In the O.A., the applicants have urged several grounds, the gist of which is noted below:

- (i) Shri Sukhveer Singh (respondent no.4), who was the controlling officer of Mr.Aneesh Ahmed, had made sexual advances on applicant no.1 (the widow of Mr.Aneesh Ahmed). Applicant no.1 spurned the sexual advances made by respondent no.4 and lodged complaint with Police Department

against respondent no.4. In this connection, her husband also lodged complaint with higher authorities of the Railway against respondent no.4. Therefore, at the instance of respondent no.4, respondent no.3 (Disciplinary Authority) issued the charge memo on false and baseless allegation. Respondent no.4 did not allow Mr.Aneesh Ahmed to perform duty and wrongfully showed him as absent, and said to applicant no.1 that he would harm her husband (Mr.Aneesh Ahmed).

- (ii) Mr.Aneesh Ahmed had filed OA No.598 of 2005 before Lucknow Bench of the Tribunal for a direction to the respondents to allow him to perform duties. The Tribunal, vide order dated 13.12.2005, disposed of the said OA directing the respondent no.3 to decide his representation. Respondent no.3 having failed to decide his representation, Mr.Aneesh Ahmed had filed OA No.110/2006 again seeking a direction to respondents to allow him to perform duties. The Tribunal, vide order dated 1.8.2008, disposed of OA No.110/2006 directing the respondents to hold an enquiry into the whole matter and complete the

same within two months from the date of receipt of copy of the order.

- (iii) Before OA No.110/2006 could be decided by the Tribunal, the impugned order of punishment of removal from service was passed on 9.4.2008 by the Disciplinary Authority.
- (iv) The enquiry was not held by the EO in accordance with the rules. The EO did not give reasonable opportunity of defence to Mr.Aneesh Ahmed. The statements of witnesses were recorded in his absence.
- (v) Despite the Tribunal's order dated 19.12.2011(ibid), the Appellate Authority did not consider the defence plea taken by Mr.Aneesh Ahmed in the appeal and passed the order dated 21.2.2012(ibid) reducing the punishment from removal from service to compulsory retirement from service and directing that the alleged unauthorized absence from 30.3.2005 to 9.4.2008 was to be treated as EOL.
- (vi) The revision petition was rejected by the Revisional Authority without considering the grounds urged therein.

2. Resisting the OA, the respondents have filed a counter reply. The respondents have denied the allegations made by the applicants against respondent no.4. The disciplinary proceeding against Mr.Aneesh Ahmed has been conducted strictly according to rules. Mr.Aneesh Ahmed has been afforded opportunity. The Disciplinary Authority, Appellate Authority and Revisional Authority have all considered the materials available on record while passing the orders impugned in the present O.A. Therefore, the impugned orders do not suffer from any illegality.

3. In their rejoinder reply, besides reiterating more or less the same averments and contentions, the applicants have also made allegation against respondent no.3, i.e., Disciplinary Authority, that Mr.Aneesh Ahmed was dismissed from service wrongfully only because the applicant herein (applicant no.1) did not yield to the illegal and immoral demands of respondent no.3 & 4.

4. We have perused the records, and have heard Ms.Meenu Mainee, the learned counsel appearing for the applicant, and Mr.V.S.R.Krishna, the learned counsel appearing for the respondents.

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 (i) where 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; and (iv) on account of proven bias and mala fide.

6. The Honøble Apex Court in the case of **K.L. Shinde v. State of Mysore**, (1976) 3 SCC 76, having considered the scope of jurisdiction of this Tribunal in appreciation of evidence, has ruled as under:

“9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada-bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed

his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943 = AIR 1963 SC 375 where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

7. In Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and Others, AIR 1984 SC 1805, it has been laid down by the Honøble Supreme Court that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be

rejected as perverse. It has also been laid down that where a quasi judicial tribunal records findings based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

8. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Honøble 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 reappraise 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.

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In **Union of India v. H. C. Goel (1964) 4 SCR 718** : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”.*

9. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC

90, the Honøble 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."

10. The above view has been followed by the Honøble Apex Court in **High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil**, (2000) 1 SCC 416, wherein it has been held as under:

“...Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority, (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed before Article 226 of the Constitution.”

11. **In Syed Rahimuddin v. Director General, CSIR and others,** (2001) 9 SCC 575, the Honøble Apex Court has observed as under:

“...It is well settled that a conclusion or a finding of fact arrived at in a disciplinary enquiry can be interfered with by the court only when there are no materials for the said conclusion, or that on the materials, the conclusion cannot be that of a reasonable man....”

12. **In Sher Bahadur v. Union of India,** (2002) 7 SCC 142, the order of punishment was challenged on the ground of lack of sufficiency of the evidence. The Honøble Apex Court observed that the expression "sufficiency of evidence" postulates "existence of some

evidence" which links the charged officer with the misconduct alleged against him and it is not the "adequacy of the evidence".

13. 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.....”

14. We have already noted that in compliance with the Tribunal's order dated 19.12.2011 passed in OA No.2642 of 2009, the Appellate Authority reconsidered the matter and reduced the punishment from removal from service to compulsory retirement from service, vide order dated 21.2.2012. It was also stipulated by the Appellate Authority that the period of unauthorized absence from 30.3.2005 to 9.4.2008 shall be treated as EOL. Being aggrieved by the Appellate Authority's order dated 21.2.2012, applicant no.1 preferred a revision petition dated 1.3.2012. The revision petition was

considered and rejected by the Revisional Authority, vide its order dated 15.3.2013, which is reproduced below:

“As per available instructions circulated by Railway Board vide letter No.E(D&A) RG 6-18 dated 13.05.2008, appeals submitted by the family members of the deceased employee should not be entertained. However, in compliance with the Hon’ble Court’s directions passed on 09.01.2013 and received in this office on 15.01.13, I have considered the revision petition dated 01.03.12 submitted by you and observe as under:

1. *Late Sh.Anees Ex.Trolley man under ADEN/NBD was removed from service by Disciplinary authority vide order dated 09.04.08 on the charge of unauthorized absence from duty after following due procedure under the Railway Servants Discipline & Appeal Rules 1968. The appeal filed by late Sh.Anees was rejected by appellate authority vide order dated 12.05.09. Deceased had not filed any revision petition during his life time i.e. up to his date of death viz. 20.07.2010.*

2. *Late Sh.Anees was habitual of being unauthorized absent from duty without prior intimation/sanction of leave. On perusal of his service record it has been found that he remained absent on 05.12.1993, 08.12.1993, 11.12.1993, 03.01.1994, 21.08.1996, 22.08.1996 & 27.08.1996, 29.08.1996 to 17.09.1996, 20.09.1996, 31.10.1996 to 05.11.1996, 17.11.1996 to 19.11.1996, 26.11.1996, 20.12.1996, 21.12.1996, 29.12.1996, 18.01.1997, 19.01.1997, 02.02.1997 to 10.02.1997, 13.02.1997, 23.05.1999, 24.05.1999, 05.05.2000 to 10.05.2000, 22.5.2000 to 27.05.2000, 12.06.2000 to 15.06.2000, 01.02.2001 to 18.02.2001. He remained under suspension from 05.05.2002 to 27.05.2002. The major penalty charge sheet which led to this removal was issued on 09.04.08, for unauthorized absence from 30.05.05 onwards.*

3. *It is clear from the records that Sh.anees was habitual of unauthorized absence. Therefore, the claim by you that working of Shri Anees has always been most satisfactory cannot be said to be correct. It also needs to be noted that Sh.Sukhveer Singh was posted as CPWI/BJO from 19.04.02 to 11.11.08 where as the employee’s record of absence dates back to 1993.*

4. *The allegation of sexual harassment was examined by the appellate Authority and it was opined that the*

same was not true because it was an afterthought as the employee did not have any other excuse to defend the lapse of his unauthorized absence. The appellate authority has also observed therein that Sh.Anees could have complained about not being taken on duty to higher officials but he did not do so (appellate Authority order dt.21.2.12).

5. *Sr.DEN-1/MB had called the late Sh.Anees to produce his defence against charges but late Sh.Anees failed to submit any satisfactory documents/evidence against unauthorized absence and as such the appeal was rejected.*

6. *In compliance of orders of Hon'ble Tribunal appeal of your husband was re-decided and appellate authority, purely on humanitarian grounds revised the order of "Removal from service" to "Compulsory retirement" considering the welfare of family of deceased and the intervening period was decided as extra ordinary leave. The orders were conveyed to applicant vide letter No.E/2/D&AR/Anees/MB dated 21.02.2012.*

7. *The appellate authority had faully honoured the Orders of Hon'ble Tribunal in OA No.2642/09 and decided the appeal of applicant in such a way that legal representatives of deceased can earn pensionary benefits considering the welfare of family of deceased.*

8. *In application dated 01/03/2012 you have prayed that the orders of the appellate authority be set aside and all consequential benefits may be granted to her as your husband had completed 25 years of service and had still 12/13 years of service to be rendered.*

9. *After going through the record of the case the undersigned is of the opinion that no case is made out for setting aside the order of the Appellate Authority. It is also clear that the circumstances of the family of deceased Rly employee have already been considered when it was decided to revise the order of removal from service to "compulsory retirement" so that family of deceased can avail pensionary benefits of deceased Rly employee which would mitigate its suffering. Thus the family of the deceased has already been shown sympathy and will be paid settlement dues & family pension on her submission of application for the same.*

In view of the above, I do not find any reason/ground to change the order of appellate authority."

15. From the above order, it is evident that both the Appellate Authority and Revisional Authority have duly considered the pleas raised by Mr.Aneesh Ahmed and the present applicants regarding respondent no.4 not allowing Mr.Aneesh Ahmed to perform duty, and also making sexual advances on applicant no.1. Therefore, we find no substance in the contention of the applicants that both the Appellate Authority and Revisional have failed to consider the pleas urged in the appeal and revision petition.

16. Furthermore, after perusing the materials available on records of the present O.A., we have found substantial force in the contention of the respondents that the allegations made by the applicant against respondent no.4 are baseless and false. It transpires that after receipt of the charge memo dated 18.6.2005, Mr.Aneesh Ahmed filed OA No. 598 of 2005 before the Lucknow Bench of the Tribunal and prayed for a direction to the respondent-Railway authorities for allowing him to perform duty. The Lucknow Bench of the Tribunal, vide its order dated 15.12.2005, disposed of OA NO. 598 of 2005, directing respondent no.3 to decide the representation of Mr. Aneesh Ahmed within a period of one month. There is no mention in the said order dated 15.12.2005 about the charge memo dated 18.6.2005 and initiation of the departmental proceeding against Mr.Aneesh Ahmed. It is also the case of Mr.Aneesh Ahmed that when in spite of the Tribunal's order dated 15.12.2005, respondent

no.4 did not allow him to perform duty, he filed OA No.110 of 2006 before the Lucknow Bench of the Tribunal for a direction to the respondents to allow him to perform his duties. It is the further case of Mr.Aneesh Ahmed that a complaint dated 30.3.2005 was made by his wife (applicant no.1 in the present O.A.) to the Police Inspector, Bijnorø, in connection with the sexual advances being made by respondent no.4 on her. If at all a complaint dated 30.3.2005 was lodged by applicant no.1 with the Police Inspector, Bijnorø, in connection with sexual advances being made by respondent no.4 on her, the police must have carried out investigation and submitted a report before the appropriate court and criminal case might have been initiated against respondent no.4 in the criminal court. Save and except making a bald averment and filing a typed copy of the purported complaint dated 30.3.2005, the applicants have failed to mention either before the Respondent railway authorities or before this Tribunal as to what happened to the said complaint. They have also failed to produce before this Tribunal any material to show as to what action was taken by the Police Inspector, Bijnorø on the purported complaint dated 30.3.2005. Merely because a complaint was lodged by a person with the police, it cannot be said that the allegations made therein are correct. In his representation dated 8.4.2005 addressed to the Divisional Railway Manager, Northern Railway, Moradabad, Mr.Aneesh Ahmed has stated that respondent

no.4-P.W.I., Shri Sukhveer Singh, had been continuously harassing him for the last two years. The leave applied for was not being granted by respondent no.4 to him. Shri Sukhveer Singh also misbehaved with him and hurled dirty abuses at him and insulted him in many ways. In 2004, for the months of June, July, August and September, and in 2005 from the very beginning, respondent no.4-Shri Sukhveer Singh, P.W.I. had marked him absent and deducted substantial amount from his salary. On 30.3.2005 at 7.30 in the morning, respondent no.4-Shri Sukhveer Singh, P.W.I, through the Trackman Mahipal, called his wife to residence and told that her husband was working under him and she should come to his house, otherwise he shall not allow him to do duty. In the said representation dated 8.4.2005 purportedly submitted by Mr.Aneesh Ahmed, there is no mention about the complaint dated 30.3.2005 being lodged by his wife (applicant no.1) against respondent no.4-Mr. Sukhveer Singh, PWI. In his representation dated 26.2.2008 against the findings of the Enquiry Officer, Mr.Aneesh Ahmed took the plea that he could not attend his duties due to serious illness of his wife who was suffering from cancer, in support of which he claimed to have produced the medical papers before the Enquiry Officer. He also took the plea that as his case was going on before the Lucknow Bench of the Tribunal, the Enquiry Officer had asked him to file an application for adjournment of the departmental enquiry. Accordingly, he submitted an application

for adjournment of the enquiry. But, instead of adjourning the enquiry, the Enquiry Officer recorded the statements of two witnesses, completed the enquiry, and submitted his report finding the charge as proved against him. Thus, prejudice was caused to him. In this representation, Mr. Aneesh Ahmed also did not whisper about the allegation of any sexual advances being made by respondent no.4 on his wife. He even did not mention about lodging of complaint with the police by applicant no.1, or about the matter being reported by him to the Divisional Railway Manager, Northern Railway, Moradabad. In view of all the above, we are unable to accept the plea of the applicants that the disciplinary proceeding initiated and the impugned orders passed by the Railway authorities are tainted with malice.

17. The materials on record when judged on the touchstone of the legal principles adumbrated in paragraphs 6 to 13 of this order leave no manner of doubt that the orders passed by the Appellate Authority and Revisional Authority do not suffer from any illegality, irregularity, or perversity.

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

19. In light of our above discussions, we have no hesitation in holding that the applicants have not been able to make out a case for the reliefs claimed by them. Accordingly, the O.A., being devoid

of merit, is dismissed. The interim orders passed by the Tribunal in the present proceeding stand vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

AN