CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.116/2013

Reserved On:23.07.2016
Pronounced On:29.07.2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Sh. V. P. Pachouri
S/o Shri Shiv Ram Pachouri
R/o 209/B-3, Western Central
Railway Colony,
Tuglakabad, New Delhi-44. ...Applicant

(Argued by: Mr. M. K. Bhardwaj, Advocate)

Versus

Union of India & Ors.

Through :

1. General Manager
West Central Railway,
Jabalpur,
Madhya Pradesh.

2. Divisional Railway Manager,
Western Central Railway
Kota Division,
DRM Office, Kota.

3. Senior Divisional Electrical Engineer,
Electrical Loco Shed
Western Central Railway
Kota Division, TRS Tughlakabad,
New Delhi. ....Respondents

(By Advocate : Mr. Kripa Shankar Prasad)

ORDER

Justice M. S. Sullar, Member (J)

The matrix of the facts and material, culminating in the commencement, relevant for disposal of instant Original

Application (OA), and emanating from the record, is that, applicant, V.P. Pachouri S/o Shri Shiv Ram Pachouri, while working as Janitor in Railways, was stated to have committed the misconduct, during the course of his employment. He was dealt with departmentally under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter to be referred as "Service Rules").

2. As a consequence thereof, applicant was served with Articles of Charges, which, in substance are as under:-

> "**Articles-I, II & III**
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> On 3.1.1997, you were deputed by SSI (G) for inspecting the tractor while filling the mud. The completely filled tractor was inspectors after passing from the main gate of Electric Loco Shed and about 1000 Kgs. of released Ferrous scrap was found. The tractor should have been filled only of mud instead of metal. Your have not responsibly discharged your duties and due to your negligence, there would have been loss of Railway property".

3. Although, the applicant has denied the charges, filed the reply to the charge sheet dated 08.02.1997 and refuted the allegations, but a regular Departmental Enquiry (DE) was initiated against him. An Enquiry Officer (EO) was appointed, who recorded and appreciated the evidence, completed the enquiry and came to the definite conclusion that the charges against the applicant and his co-delinquent Shri P.S. Negi stood proved vide impugned enquiry report dated 23.02.1998 (Annexure A-C).

4. Agreeing with the findings of the EO, initially a penalty of reduction in pay scale for 3 years was imposed on the

applicant vide order date 22.04.1998 by the then Disciplinary Authority (DA).

5. Dissatisfied thereby, the applicant filed the appeal, raised various points and the Appellate Authority (AA) considered all the issues raised by the applicant, but after issuing Show Cause Notice (SCN), enhanced the punishment awarded by the DA and imposed fresh punishment by reverting him from Technician Grade-I in the pay scale of Rs.4500-125-7000 to the post of Technician Grade-III in the scale of Rs.3050-75-3950-80-4590 for 15 years till he is found fit by the competent authority. It was further stated that after completion of this penalty, he shall be placed in the present post of Technician Grade-I Rs.4500-125-7000 with future effect of increments, vide order dated 20.01.2001 (page 45).

6. Thereafter, the applicant filed **OA** bearing **No.121/2009** before this Tribunal on the same very grounds, as pleaded by him before the AA. However, this Tribunal, negated all the contentions raised by the applicant with regard to the validity of departmental proceedings and impugned orders, but remanded the case back to the DA, to consider the question of parity of the applicant with Shri P.S. Negi, co-delinquent, as enshrined under Article 14 of the Constitution of India, vide order dated 03.07.2009 (Annexure A-14)(page 129).

7. In pursuance of the order passed by the Tribunal in **OA No.121/2009** (supra), the applicant's case was again considered and the initial punishment imposed by the DA was maintained by the AA, vide order dated 10.09.2009 (Annexure-A1A). Thereafter, applicant filed **CP** bearing **No.136/2009** in OA No.121/2009, which was disposed of by this Tribunal in 2009 by directing the respondents to decide the appeal of the applicant. In pursuance thereof, his case was again considered by the AA in detail, and in compliance of the order passed in CP and showing sympathy to his case, the punishment of 15 years awarded to him by the initial AA was reduced to that of 13 years, while retaining the basic punishment of reduction to lower scale, vide order dated 03.03.2010 (Annexure A-2).

8. Subsequently, the applicant again filed **OA** bearing **No.3797/2010** against the punishment orders on the same very ground. The said OA was disposed of by this Tribunal with the direction to the applicant to file the statutory Revision Petition vide order dated 04.02.2011 (Annexure A-15)(page 131).

9. In compliance thereof, the Revision Petition filed by the applicant was partly accepted and the punishment already awarded by the DA, was reduced to that of reduction to lower grade of Rs.3050-4590 (as per 6th Pay Commission revised scale Rs.5200-20200, Grade Pay Rs.1900/- PB-1) and lowest stage for a period of 10 (ten) years with cumulative effect, by

means of an order dated 22.04.2011 (Annexure A-1) by the Revisional Authority (Chief Electrical Loco Engineer).

10. Aggrieved thereby, the applicant, has preferred the instant OA to challenge the impugned orders (Annexure A-1 to A-2), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

11. The case set up, by the applicant, in brief, insofar as relevant, is that, the authorities have not provided adequate opportunity to the applicant, so much so the statutory rules and principles of natural justice were violated. According to the applicant, that even he has been discriminated in the matter of awarding of punishment, as the main co-delinquent, Shri P.S. Negi, has been exonerated without any cogent reason, whereas the applicant was punished without any rhyme or reason.

12. Levelling a variety of allegations, and narrating the sequence of events, in detail, in all, the applicant claimed that impugned departmental enquiry and orders are illegal, arbitrary, whimsical and without jurisdiction. On the basis of the aforesaid grounds, the applicant sought the quashment of the impugned orders, in the manner indicated hereinabove.

13. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded, that the applicant was rightly punished by the competent authorities after following due procedure of enquiry. It was pleaded that the applicant

was responsible for the charges levelled against him, whereas Shri P.S.Negi was his in-charge, and may not be held responsible for the negligence committed by his subordinate staff.

14. According to the respondents, the Tribunal has no jurisdiction to entertain the matter. After following due procedure and recording the evidence, the EO submitted his report on the basis of which, the DA has rightly awarded the pointed punishment. In the appeal and revision filed by the applicant the punishment awarded to the applicant was enhanced. In all, the respondents claimed that the applicant was rightly punished after taking into consideration the totality of facts, circumstances and evidence on record by the Disciplinary Authority. However, the respondents have not denied the exoneration of other similarly situated co-employee Shri P.S. Negi, by the competent authority.

15. Virtually acknowledging the factual matrix, and reiterating the validity of the impugned orders, the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

16. Controverting the allegations contained in the reply of the respondents and reiterating the grounds taken in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

17. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that the instant OA deserves to be accepted for the reasons mentioned hereinbelow.

18. However, ex-facie the arguments of learned counsel that, neither proper opportunity was granted to the applicant nor due procedure of enquiry was followed and since the authorities have violated the statutory provision of principles of natural justice, so the impugned orders are illegal and without jurisdiction, are not only devoid of merit, but misplaced as well.

19. As is evident from the record that all these issues raised by the applicant, were duly considered and negated by the previous AA, vide impugned order dated 20.01.2001, which, in substance is as under:-

> ".....The employee has also complained that D&AR Rules have not been followed. The following speaking order is issued on the grounds raised by him:
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> (1) The employee had stated he was not present on the place of incident on 3.1.1997 is not accepted because his supervisor has stated that Shri Pachouri was instructed to perform duty at the place of lifting garbage and the employee was present on 3.1.1997 on duty. The employee has himself stated in his reply to the charge sheet dated 8.3.1997 at about 11.50 AM while trolly was entering inside the shed he has reached to the main gate for his lunch break. From this it is proved that the employee had knowledge of the trolly entering the shed. It was his duty that filling of garbage in the trolly should have been carried out in his presence.
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> (2) The employee had stated that he requested for defence counsel and the defence counsel was asked to join in the inquiry, this statement is absolutely wrong. In the beginning the employee had engaged one Shri K.S. Chauhan SSE/factory, Dahod but he was unable to come in the enquiry, therefore, Shri Pachouri on 27.08.1997 while answering a question clearly stated that he does not require a defence counsel and he himself will deal the case. Thus, the statement of the employee that he was not provided defence counsel is incorrect.
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> (3) The employee has stated that he was not given time for calling defence witnesses, which is incorrect because in the inquiry he had never submitted the name of the defence witnesses whom he wanted to examine.

(4) The employee had stated that he was not put to notice during inquiry proceedings, which is incorrect, as the employee was put to notice in the inquiry on 3.7.1997 and 2.1.1998.

(5) The employee had stated he was not given entire copy of inquiry report, which is incorrect as the employee was in receipt a copy of inquiry report letter No.E/TDK/308/97/33 dated 23.3.1998 received by the employee on 27.3.1998.

(6) The employee had stated that after receiving the inquiry report he was prevented from raising other grounds, which is incorrect as the employee after receiving a copy of inquiry report had submitted his last representation on 6.4.1998.

(7) The statement of the employee of (sic) the main Contractor Shri Kiran Salanki was not issued notice to join the inquiry which is not correct as the inquiry officer issued letter No.E/TDK/308/98/33 dated 19.1.1998, 2.2.1998 and 13.2.1998 through Regd./AD to join the inquiry but he did not participate (sic) in the inquiry.

From the above facts it is concluded that there is no truth in the grounds raised by the employee. The employee was given full opportunity to defend himself (sic) from time to time and entire Rules of Discipline & Appeal had been followed. The employee did not submit any reply to the penalty enhancement notice dated 13.11.2000 despite of the fact that two months had expired whereas he should have answered within 10 (ten) days. From this it is proved that the employee had nothing to say in his defence to the penalty enhancement notice.

Due to negligence of the employee, iron scrap could have been exported outside the shed with the garbage which was caught at the last moment otherwise there would have been loss of Railway property. Negligence of the employee proves that he is not devoted to his duty and as such he is unbecoming of a Railway employee, for (sic) which act there is violation of Railway Conduct Rules, 1966, para 3.1 (ii) and (iii)".

20. Not only that all these points were specifically taken by the applicant in the previous OA (Annexure A-14), which were not accepted by this Tribunal and would be deemed to have been negated, as the case was remanded to the DA only to consider the matter on the basis of parity with Shri P.S. Negi.

21. Moreover, Explanation-IV of Section 11 of The Code of Civil Procedure (CPC) postulates that "any matter which might and ought to have been made ground of defence or attack in such former suit, shall be deemed to have been a

matter directly and substantially in issue in such suit". Explanation-V further posits that any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused by the competent court. Therefore, once all the points taken were duly considered by the previous AA, were also taken by the applicant in the OA and legally will be deemed to have been negated by this Tribunal, by way of judgment (Annexure A-14). Therefore, applicant is stopped from urging the same issues again and again.

22. Faced with the situation, learned counsel for the applicant has fairly acknowledged that in view of the material on record and legal position, he would be unable to further substantiate his argument assailing the DE proceedings and impugned orders on merits. Thus, in view of the indicated evidence on record and in the absence of any procedural illegality and irregularity, in conduct of DE, no ground to interfere with the impugned orders on merits is made out, in view of law laid down by Hon'ble Apex Court in the case of ***Chairman-cum-Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others (2009) 15 SCC 620***.

23. Be that as it may, however, the next contention of learned counsel that the applicant was totally discriminated

in the matter of awarding the punishment vis-à-vis his co-delinquent Shri P.S. Negi, has considerable force.

24. What cannot possibly be disputed here is that a joint DE was conducted against Shri P.S. Negi and the applicant (Ved Prakash Pachouri). The EO concluded that the charges against them stand proved vide impugned enquiry report dated 23.02.1998 (Annexure A-6 Colly.)(page 84), which reads as under:-

"Finding

SSE/G Shri P.S. Negi stated on 18.02.1998 that as per letter No.EL/95/717 (TKD) dated 10.10.1996 Janitor Shri P.S. Negi was deputed to supervise the Trolly loading by kachara regularly SSE /G also stated that Shri P.S. Negi with RPF Stafff was available near Trolly also. It was looked by Shed Staff too. Therefore, up to some extent **Shri P.S. Negi is responsible** due to which Rly material was shed out with kachra.

Contractor Shri Salanki is fully responsible for pilferage at Rly material to take out with kachra in trolly. Contractor was repeatedly called to attend enquiry but he did not attend the enquiry so far.

As per letter No.EL/95/717 (TKD) dated 10.10.1996 Shed Staff SSE/G, Jaintor, RPF involved in above connivance, but (sic) physically only two persons Jaintor and RPF were visible with Trolly (sic). Therefore, **Shri Ved Prakash is partly responsible**".

25. It is not a matter of dispute that, Shri P.S. Negi, co-delinquent of the applicant, was exonerated on the ground that he was a Senior Supervisor in the General Department and the applicant (Ved Prakash Pachouri), was discharging the duties of junior. The mere fact that Shri Negi was a Senior Supervisor, ipso facto, is not a ground, much less cogent to exonerate him, particularly when he was fully held responsible by the EO, whereas applicant was held partly responsible. The case of the applicant from the very beginning was that he was discriminated and was given different

treatment to that of similarly situated co-delinquent Shri P.S. Negi.

26. Surprisingly enough, neither DA nor AA nor RA has specifically dealt with this vital issue of parity in the right perspective and just ignored this aspect of the matter with impunity (despite specific indicated directions of this Tribunal), which is not legally permissible.

27. Therefore, in this view of the factual backdrop, we are of the considered view, that respondents cannot legally be permitted to resort to selective/different treatment to the applicant, contrary to that already granted to Shri P.S. Negi, a similarly situated person. Thus, the departmental proceedings and impugned orders passed against the applicant cannot legally be sustained as well, on the principle of parity. This matter is no more res integra and is now well settled.

28. An identical question came to be decided by Hon'ble Apex Court in case of ***Man Singh Vs. State of Haryana and others AIR 2008 SC 2481***. Having considered the scope of Articles 14 & 16 of the Constitution, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or

administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness.

29. Again, the Hon'ble Supreme Court has reiterated the Doctrine of parity in awarding the penalty in departmental proceedings in case of **Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ 120**, wherein it was held as under:-

> "11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.
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> 12. **The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.**
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> 13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from

> service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. **In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit**.
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> 14. **We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident**. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re- instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

30. Therefore, the protection under Articles 14 and 16 of the Constitution of India and principles of equality/parity and *stare decisis* are fully attracted to the case of the applicant as well and the epitome of indicated law laid down by the Hon'ble Apex Court is *mutatis mutandis* applicable to the facts of the present case and is complete answer to the problem in hand. Thus, seen from any angle, indeed the impugned orders cannot and should not legally be sustained and deserve to be quashed in the obtaining circumstances of the case.

31. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

32. In the light of aforesaid reasons, the instant OA is allowed. The impugned orders dated 10.09.2009 (AnnexureA-1A) passed by the Disciplinary Authority, order dated 03.03.2010

(Annexure A-2) of Appellate Authority and order dated 22.04.2011 (Annexure A-1) of the Revisional Authority, are hereby set aside. The applicant is exonerated of all the charges framed against him. Needless to mention that naturally he will be entitled to all the consequential service benefits. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh