

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1149 OF 2014

New Delhi, this the 23rd day of December, 2016

CORAM:

HON'BLE DR.B.K.SINHA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Niti Shekhar,s/o Sri Mahadeo Sahu,
R/o Ward No.13,
Near PetrolPump Maharaj Gang,
Madhubani,
Bihar 847211

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Applicant

(By Advocate: Mr.I.C.Mishra)

Vs.

1. Delhi Metro Rail Corporation Ltd.,
Through its Chairman,
Metro Bhawan,
Fire Bridged Lane,
Barakhamba Lane,
Barakhamba Road,
New Delhi 110001
2. Ran Vijay Kumar Singh,
Manager Operation,
L-3E & 4,
Disciplinary Authority, DMRC Ltd.,
Ghaziabad, U.P.Metro Station, Vaishali.
3. Dy.General Manager (Ops)-1,
DMRC Ltd., Metro Bhawan,
Barakhamba Lane,
Barakhamba Road,
New Delhi 110001

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Respondents

(By Advocate: Mr.R.N.Singh)

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ORDER**Per Raj Vir Sharma, Member(J):**

The applicant has filed this O.A. seeking the following reliefs:

- õ8-A. It is therefore prayed that the impugned order dated 6.8.13 along with proceeding be quashed, and order passed by R-3 on 12.11.13 also be quashed/set aside.
- B. That the applicant be reinstated with all terminal benefits as well as full back wages.
- C. Any other relief as Honøble Tribunal may deem fit and appropriate in the facts and circumstances of the case.ö

2. The brief facts of the case are as under:

2.1 The applicant was appointed as a Customer Relation Assistant (CRA) in Delhi Metro Rail Corporation (DMRC) on 4.3.2010. The competent authority, vide order dated 4.2.2013, placed the applicant under suspension, in contemplation of a disciplinary proceeding against him. The Disciplinary Authority issued memo dated 27.2.2013, along with the article of charge, and statement of imputations of misconduct in support of each article of charge, proposing to hold an enquiry against the applicant under Rule 34 of the DMRC Conduct, Discipline & Appeal Rules, 2005, and calling upon the applicant to submit, within 15 days of the receipt of the said memo, a written statement of his defence, and also to state as to whether he desired to be heard in person.

2.2 The article of charges, and statement of imputations of misconduct in support of each article of charge read thus:

ARTICLE OF CHARGES

Article-1

In the course of a surprise check conducted on the CCC of VAS station on 04.02.2013 between 12:00 to 17:00 hrs, when Shri Niti Shenkhar, Designation-CRA, Employee No.11041, was on duty, an excess of Rs.18/-was found with him. Besides this, the following violations were also observed:

- (1) He was found in unlawful possession of four live tokens thereby violating the Token Movement Procedure Order issued vide Note No.OCC/REV/PO/token/02 dated 23.04.2012.
- (2) He was not performing duty in proper uniform thereby violating Rule 12(a) of General Rules-2002.
- (3) He had kept a CSC with Write Ticket Error and details not mentioned in SAF (Shift Abstract Form) thereby violating Business Rule 6 version-IX Para 6.10.1 of DMRC.
- (4) He had kept 2 refunded Tokens and details not mentioned in SAF (Shift Abstract Form) thereby violating Business Rule 6 version-IX Para 2.10 of DMRC.
- (5) He did not keep account of CSCs (Smart Card) issued/sale in SAF thereby violating Rule 35.(1)(iii) of General Rules-2002.
- (6) He was in possession of a mobile phone while performing duty at Customer Care Centre.

Further, as per CCTV recordings of TOM-30, it is evident that Shri Niti Shekhar has left the CCC unmanned for a noticeable period of time (153 minutes during the period from 05:45 to 10:41 hrs) thereby violating the General Rule-10(1), has shown lack of supervision by not keeping a vigil on the passengers who took exit by unfair means and not penalizing them for tailgating thereby violating Business Rule-version-IX 2.8(ii). It is also clear from CCTV recordings that Shri Niti Shekhar has also violated the instructions & work rule issued by competent authority by allowing contractor staff to change containers from the AFC gates thereby violating the instructions issued vide

Note No. OCC / Rev/ BR-IX/ Instruction/ 12 dated 08.10.2012, entertaining passenger from gate of CCC and allowing unauthorized person to enter CCC thereby violating General Rule-7(a) & (b).

By the above mentioned act of serious misconduct and corrupt practices, Shri Niti Shekhar, Designation-CRA, Employee No.11041, has violated Rule 7(a) & (b), Rule 10(1), Rule 12(a) & (c), and Rule 35(1)(iii) of Delhi Metro Rail, General Rules, 2002 and Rule 4.1 (i),(ii) & (iii) of DMRC Conduct, Discipline & Appeal Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant.

STATEMENT OF IMPUTATION OF CHARGES

Article-1

In the course of a surprise check of CCC of VAS station manned by Shri Niti Shenkhar, Designation-CRA, Employee No.11041, on 04.02.2013 conducted by Shri Prem Singh Rathore, Manager (Operations)/L-3W and Shri Jayanth Pandey, Manager/S&T, an excess of Rs.18/-was found with him. Besides this, the following violations were also observed:

- (1) He was found in unlawful possession of four live tokens thereby violating the Token Movement Procedure Order issued vide Note No.OCC/REV/PO/token/02 dated 23.04.2012.
- (2) He was not performing duty in proper uniform thereby violating Rule 12(a) of General Rules-2002.
- (3) He had kept a CSC with Write Ticket Error and details not mentioned in SAF (Shift Abstract Form) thereby violating Business Rule 6 version-IX Para 6.10.1 of DMRC.
- (4) He had kept 2 refunded Tokens and details not mentioned in SAF (Shift Abstract Form) thereby violating Business Rule 6 version-IX Para 2.10 of DMRC.
- (5) He did not keep account of CSCs (Smart Card) issued/sale in SAF thereby violating Rule 35.(1)(iii) of General Rules-2002.
- (6) He was in possession of a mobile phone while performing duty at Customer Care Centre.

Further, as per CCTV recordings of TOM-30, it is evident that Shri Niti Shekhar has left the CCC unmanned for a noticeable period of time (153 minutes during the period from 05:45 to 10:41 hrs) thereby violating the General Rule-10(1), has shown lack of supervision by not keeping a vigil on the passengers who took exit by unfair means and not penalizing them for tailgating thereby violating Business Rule-version-IX 2.8(ii). It is also clear from CCTV recordings that Shri Niti Shekhar has also violated the instructions & work rule issued by competent authority by allowing contractor staff to change containers from the AFC gates thereby violating the instructions issued vide Note No. OCC / Rev/ BR-IX/ Instruction/ 12 dated 08.10.2012, entertaining passenger from gate of CCC and allowing unauthorized person to enter CCC thereby violating General Rule-7(a) & (b).

By the above mentioned act of serious misconduct and corrupt practices, Shri Niti Shekhar, Designation-CRA, Employee No.11041, has violated Rule 7(a) & (b), Rule 10(1), Rule 12(a) & (c), and Rule 35(1)(iii) of Delhi Metro Rail, General Rules, 2002 and Rule 4.1 (i),(ii) & (iii) of DMRC Conduct, Discipline & Appeal Rules, 2005, and has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant.

2.3 On 12.3.2013 the applicant submitted his written statement of defence, which reads thus:

With reference to above, I deny specifically all the allegations as alleged in the memorandum of Chargesheet and I hereby submit my written statement in defense for your kind consideration as mentioned below:-

A. Rs.18/- as was found excess was due to non-availability of coins and same was deposited to custodian with proper record in SAF as EIB in Excess Amount column. On the dates 24/10/2012, 03/11/2012, 05/11/2012, 17/11/2012 I had also deposited such amount as EIB with entry in Excess Amount column in SAF.

1. There was no any live token in my possession, hence I did not violate The Token Movement Procedure Order issued vide Note No.OCC/REV/PO/token/02 dated 23.04.2012.

2. I was performing duty in proper uniform, which I got from the department, hence I did not violate Rule 12(a) of General Rules-2002.
3. There is no any column for entry of CSC engraved no. of the cards which I got write ticket error in SAF, hence I did not violate Business Rules-version-ix para 6.10.1 of DMRC.
4. Refunded token was kept for accounting in SAF with status written on tag and was to be handed over to SCR with proper entry in SAF after the end of shift, hence I did not violate Business Rules-version-IX Para 2.10 of DMRC.
5. I got loose and refunded CSC for sale. My manager had instructed me to vend 100 CSC at a stretch and send those CSC to him for distribution in TOM for sale. There were only 30 columns for this purpose in SAF. It is not possible to make entry of 100 CSC in only 30 Columns. Further, I had to scrutinize those CSC for vending because many of those CSC had problem either unreadable or, not initialized (161), I had to entertain the passengers for various works as well. There is heavy rush of passengers at Vaishali Metro Station. It would create hectic to passengers and passengers are at our first and foremost priority. Again, it should be noted that proper accounting is done by in-charge in CSC stock movement register. Hence I acted in proper manner and did not violate Rule 35(1) (iii) of General Rules, 2002.
6. There was no any mobile phone in my possession while performing duty at Customer Care Centre.

I was present all the time in and around CCC. I always keep proper vigil in and around my CCC to assist passengers regarding different issues.

There is no any CFA provided at exit gate during morning shift. While recharging and tackling CSC/CST error and various works at a time, a CRA is often surrounded by the crowd of passengers at CCC. I do not have any idea that anybody took exit by unfair means.

My defense may be supported from the coverage of CCTV FOOTAGE of the day of incident.

The movement of contractor staff is solely under the supervision of on duty in charge and nobody had instructed me to replace the container, so, I am nowhere liable for the same.

No any passenger and unauthorized person had entered in CCC to the best of my knowledge. Further, there is no any lock in the exit CCC gate. So, any

unwanted person could enter in CCC easily either intentionally or by mistake.ö

2.4 The Disciplinary Authority, vide order dated 13.3.2013, appointed Inquiry Authority to enquire into the charges framed against the applicant.

2.5 After enquiry, the Inquiry Authority submitted its report on 24.6.2013, the relevant portion of which reads thus:

öIn the case of major penalty charge sheet to Shri Niti Shekhar Emp.11041 Customer Relationship Assistant, I (V.K.VERMA) was appointed as a Inquiry Officer by competent authority to inquire into the charges framed at page number 30 against said Niti Shekhar Emp. 11041.

Brief of Charges:-

1. Unlawful possession of 4 live tokens.
2. Not performing duty in proper uniform.
3. Keeping Write Ticket Error CSC with him & details not mentioned in SAF.
4. Keeping two refunded CST with him & details not mentioned in SAF.
5. Not keeping accounts of CSC in SAF.
6. Keeping mobile phone with him on duty.
7. Left unmanned CC for 153ö (between his shift duties from 05:45-10:41) and slackness in supervision which made two commuters got exit tailgating and deployment of contractor staff to extract token container from AFC gate.

Brief of Inquiry Proceedings:-

Inquiry has been started from 20.3.2013, Shri Niti Shekhar Emp.11041 who was called CO requested for RUD & Defence Assistant (DA) which has been accepted and photocopy of RUD has been provided to him. Shri Gajendra Malik Sr.TIA gave his consent as DA on 09.4.2013 which has been accepted, both prosecution witnesses has been cross-examined by CO, DA & IO and CO was also examined by IO. The Defence Brief has also been submitted by CO.

Observations:- After the inquiry with the help of DA, CO, PWs, RUDs, following observations are concluded-

1. Both PWs have been accepted in his deposition that there was no live tokens with CO. The 4 tokens found with CO

was adjusted of which was properly entered in surcharge register.

2. Both PWs have been accepted in his deposition that Write ticket error CSC should have been recorded but there is no specific column in SAF.
3. Both PWs gave no comments how 140 CSC to have been entered in 30 column in SAF but in his statement he stated that 100 CSC was provided for pre vending by his SM for CSC sale promotion while checking his SAF it has observed that there was no column filled by CO which shows his carelessness.
4. CO and both PWs accepted that two refunded tokens kept aside of which entry not recorded in proper column provided in SAF.
5. Since CO is bald person and he was wearing woolen cap rather than DMRC cap to save him from cold.
6. CO stated in his brief that he was having carry case like a mobile phone prototype for keeping his CSC but not cleared this at the time of inspection.
7. During the examination why CO left CC unmanned for 153öin his shift, CO told that he remained inside paid area and walking between CC and nearby transparent glass covered SCR and there was no public complaint lodged in this regard.
8. CO shown his ignorance that there was any case of tailgating in his shift and extraction of container from AFC gate by contractor staff done as heavy rush at CC.

Conclusion:-

- ö1. Charges number 5 not fully proved on the basis of available document and rule because there is no procedure how to make account of more than 30 CSC which will be vend in bulk quality for sale promotion etc. but CO shown his carelessness not to make any entry in SAF.
2. Charges number 1 & 3 not proved accepted by both PWs in their deposition.
3. Charges number 2 proved as there is no relaxation for bald person to wear woolen cap instead of DMRC cap.
4. Charges number 4 proved accepted by CO.
5. Charges number 6 not fully proved on the basis of available document that there was a carry case or mobile.
6. Charges number 7 not fully proved on the basis of available document that CO left station for 153öas there is no statement found of his immediate supervisor, i.e., station controller as he was permitted or not & how many

times to come to SCR or else where & who has permitted contractor staff to extract token container from AFC gate during rush at cust. Care.ö

2.6 The applicant submitted a representation against the enquiry report. He was also given an opportunity of personal hearing. The Disciplinary Authority passed order dated 6.8.2013 imposing on applicant the punishment of removal from service with effect from 7.8.2013. The relevant portion of the said order dated 6.8.2013 is reproduced below:

öORDER

WHEREAS Mr.Niti Shekhar, Designation-CRA, Emp.No.11041 has been convicted on Under charges of violation of Rule 7(a)&(b), Rule-10(1), Rule-12(a)&(c) and Rule-35 (1)(iii) of DMRC General Rules, 2002 and 4.1((i), (ii) & (iii) of DMRC conduct, discipline and appeal rules.

AND WHEREAS the undersigned has carefully studied the charge sheet, other relevant papers like charged official reply, enquiry report, the reply of C.O. The charges of irregularities like mismatch of cash, possession of live CSTs and not keeping account of CSC (Smart Card) in SAF, possession of mobile phone while performing duty etc. have been proved. The CO left Customer Care Centre unmanned for a long period of time has also been proved.

AND WHEREAS it is considered that the conduct of the said Mr.Niti Shekhar, Designation-CRA, Emp.No.11041 which has led to his conviction is such as to warrant the imposition of a major penalty.

AND WHEREAS Mr.Niti Shekhar, Designation-CRA, Emp.No.11041 was given an opportunity of personal hearing and offer his written explanation;

AND WHEREAS Mr.Niti Shekhar, Designation-CRA, Emp. No.11041 has given a written explanation which has been duly considered by the undersigned;

NOW, THEREFORE, in exercise of the powers conferred by Rule 42(Revised) of the DMRC Conduct Discipline and Appeal Rules, 2005, and keeping in view of the totality of the circumstances and the merit of case, the undersigned has passed the following speaking order ö

The undersigned has carefully gone through the details of charges as contained in the charged memorandum, explanation/reply of charged officials, enquiry report and the

representation of the charged official. Taking into consideration of the various facts and circumstances, the enquiry report & findings of the undersigned in this case, it has been proved that the offences committed are very grave. The defence reply is full of generalities only. Unmanned Customer Care Centre for over a long period of time & violations of various instructions indicates wrong motive of CO. Mr.Niti Shekhar, Designation-CRA, Emp.No.11041 failed to maintain absolute integrity and dignity to the corporation also exhibited lack of devotion to duty and acted in a manner of unbecoming of public servant. Such employee does not deserve to be in the service of DMRC which set very high standards for its employee. Mr.Niti Shekhar, Designation-CRA, Emp.No.11041 is removed from service w.e.f. 07.08.2013.

Appeal, if any, against the order for imposition of punishment can be made to the appellate authority i.e., DGM/Operations-I, within one month of the communication of this order.ö

2.7 Being aggrieved, the applicant made an appeal to the Appellate Authority against the punishment order passed by the Disciplinary Authority. In his appeal, the applicant submitted that the Disciplinary Authority failed to consider the pleas raised by him in the written statement of defence, and explanation in their proper perspective. It was also pleaded by the applicant that the punishment of removal from service, as imposed by the Disciplinary Authority, was not commensurate with any of the charges held by the Inquiring Authority to have been proved against him.

2.8 The applicant's appeal was turned down by the Appellate Authority, vide its letter dated 12.11.2013, which reads thus:

öWith reference to above case, your appeal was put up to the undersigned (appellate authority). The undersigned has gone through the case and passed the following order.

öThe undersigned has studied the relevant material i.e. charges, enquiry report, DA's order and remarks etc. There have been large number of serious irregularities and the defence

reply of CO has been duly considered by D. A. Thus there does not appear to be any case of leniency. So the punishment awarded is upheld.ö

Please acknowledge the receipt.ö

2.9 Hence, the applicant has filed this O.A. seeking the reliefs as aforesaid.

3. In the above context, it has been contended by the applicant that the impugned orders passed by the Disciplinary and Appellate Authorities suffer from non-application of mind; and that the punishment awarded is disproportionate to the charge held as proved against him, and is *ex facie* excessive.

4. Resisting the O.A., the respondents have filed a counter reply. The respondents have stated, *inter alia*, that the O.A. is premature as the applicant has not availed of the departmental remedy of preferring review petition against the orders impugned by him in the O.A. The impugned orders passed by the competent authorities under the DMRC Conduct, Discipline and Appeal Rules do not suffer from any illegality and/or infirmity.

5. The applicant has filed a rejoinder reply refuting the stand taken by the respondents.

6. We have heard Mr.I.C.Mishra, the learned counsel appearing for the applicant, and Mr.R.N.Singh, the learned counsel appearing for the respondents. We have also perused the written note of submissions filed by Mr.R.N.Singh, the learned counsel appearing for the respondents.

7. In support of their plea of non-maintainability of the O.A., the respondents have invited our attention to Rule 33 of the DMRC Conduct, Discipline and Appeal Rules, which reads thus:

33. Review

33.1 Notwithstanding anything contained in these rules, the reviewing authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such orders thereon as it may deem fit.

33.2 Provided that if the enhanced penalty, which the reviewing authority proposed to impose, is a major penalty specified in clauses (e), (f) or (g) of Rule 23 and on inquiry as provided under Rule 25 has not already been held in the case, the reviewing authority shall direct that such an inquiry be held in accordance with the provisions of rule 25 and thereafter consider the record of the inquiry and pass such order as it may deem proper. If the appellate authority decides to enhance the punishment but an inquiry has already been held in accordance with the provisions of rule 25, the reviewing authority shall give show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into account the representation, if any, submitted by the employee.

According to the respondents, Rule 33, *ibid*, provides for the remedy of filing a review petition by an employee before the Reviewing Authority against the orders passed by the Disciplinary and Appellate Authorities. Therefore, the O.A. filed by the applicant without exhausting the remedy of filing a review petition under Rule 33, *ibid*, is not maintainable as being hit by Section 20 of the Administrative Tribunals Act, 1985. We do not find any substance in this plea of the respondents. Rule 33(1), *ibid*, only enables/empowers the Reviewing Authority to call for the record of the case within six months of the date of the final order and, after reviewing the case, pass such orders thereon as it may deem fit. Rule 33(2), *ibid*, prescribes the

procedure to be followed by the Reviewing Authority in a case where it proposes to enhance the penalty and/or to impose any of the major penalties specified in clauses (e), (f) and (g) of Rule 23. Rule 33 nowhere prescribes that a review petition lies against an order passed by the Disciplinary Authority/Appellate Authority, or that an employee aggrieved by orders passed by the Disciplinary Authority and Appellate Authorities can file a review petition before the Reviewing Authority. Thus, it can by no stretch of imagination be said that Rule 33, *ibid*, provides for a remedy of filing review petition before the Reviewing Authority by an employee of the DMRC who is aggrieved by orders passed by the Disciplinary and Appellate Authorities.

8. It is no more *res integra* that the power of judicial review does not empower 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 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. The Hon^{ble} Supreme Court in **B.C.Chaturvedi Vs. Union of India & others**, [(1995) 6 SCC 749], while examining the scope of judicial review, held as under:

õ12. 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 reappreciate 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.ö

9. Coming to the grounds of challenge to the impugned orders, the contention of the applicant is that both the Disciplinary and Appellate Authorities have failed to consider the report of the Inquiry Authority, and the written statement of defence/explanation submitted by the applicant in their proper perspective. The Inquiry Authority has held charge nos.1, 3, 5,6 and 7 as not proved, charge no.2 as proved , and charge no.4 as proved since the applicant accepted the same. Though the applicant has taken the stand in

his written statement of defence that the refunded tokens were kept by him for accounting in SAF with status written on tag and were to be handed over to SCR with proper entry in SAF after the end of shift and, therefore, he did not violate any rule. In his appeal, the applicant has taken the plea that his Station Manager had instructed him to vend 100 CSCs at a stretch and send those CSCs to him for distribution to TOM for CSCs promotional sale. A perusal of the impugned orders does not show the aforesaid plea of the applicant to have been considered by both the Disciplinary and Appellate Authorities. This apart, the Disciplinary Authority, in paragraph 2 of its order dated 6.8.2013, has observed that the charges of irregularities like mismatch of cash, possession of live CSTs,....., possession of mobile phone while performing duty etc. have been proved and the C.O. left Customer Care Centre unmanned for a long period of time has also been proved, though charge nos.1,3,5,6 and 7 pertaining thereto have been held by the Inquiry Authority as not proved. While rejecting the appeal and upholding the order of punishment, the Appellate Authority has also failed to consider any of the pleas raised by the applicant in his appeal. In the above view of the matter, we have no hesitation in holding that the orders passed by the Disciplinary and Appellate Authority smack of total non-application of mind, and hence, the same are liable to be interfered with.

10. The other contention of the applicant is that the punishment awarded is disproportionate to the charge held as proved and is *ex facie* excessive. From the orders impugned, we find that the punishment awarded

to the applicant is removal from service. While examining the question of excessiveness of the punishment, the only test is that it should prick the conscience of the court and cannot be approved by a prudent person. In this regard, Courts have applied the doctrine of proportionality to arrive at the conclusion that in a particular case based upon the set of allegations and the penalty awarded, whether it is commensurate to the act complained of or disproportionate to the proved charge. The issue has been considered by the Honorable Apex Court in various judgments.

11. In **Bhagat Ram Vs. State of Himachal Pradesh**, (1983) 2 SCC 442, the Court held:

“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasize is that all powers have legal limits.”

12. In **Union of India Vs. Parma Nanda**, (1989) 2 SCC 177, the Honorable Supreme Court, while considering the jurisdiction of the Tribunal to interfere in the matter of punishment imposed in disciplinary proceedings, made the following observations:

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment

would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.ö

13. Similar view has been expressed by the Honøble Supreme Court in **State Bank of India and others Vs. Samarendra Kishore Endow and another**, (1994) 2 SCC 537. In paragraph 10 of the judgment, the Honøble Supreme Court observed thus:

öOn the question of punishment, learned counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It öis not an appeal from a decision, but a review of the manner in which the decision was made. (Per Lord Brightman in *Chief Constable of the North Wales Police v. Evans* (1982 (3) All E.R. 141 at 155) and *H.B.Gandhi v. M/s Gopinath & Sons* (1992) Suppl. (2) SCR 312). In other words the power of judicial review is meant öto ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.ö

14. In **Jai Bhagwan Vs. Commissioner of Police and others**, (2013) 11 SCC 187, the Honøble Supreme Court held thus:

ö10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in

appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishmentí ..ö

15. The view taken in **Jai Bhagwan's case** (supra) was reiterated in **Ishwar Chandra Jayaswal Vs. Union of India and others**, (2014) 2 SCC 748; and **Collector Singh Vs. L.M.L.Limited, Kanpur**, (2015) 2 SCC 410.

16. In the instant case, out of seven charges, only two charges, i.e., charge nos. 2 and 4, are held by the Inquiry Authority to have been proved against the applicant. Charge no.2 is that during surprise check on 4.2.2013 it was found that the applicant was not performing duty in proper uniform. That is to say, during the surprise check, it was found that the applicant did not wear the DMRC cap on his head while performing duty. Charge no.4 is that during the said surprise check, the applicant was found keeping two refunded CST with him without mentioning the details thereof in the SAF. Though charge no.4 has been denied by the applicant, yet the Inquiry Authority has held that charge no.4 has been proved since the same has been accepted by the applicant. Accepting the findings of the Inquiry Authority,

the Disciplinary Authority has imposed on applicant the punishment of removal from service. The Appellate Authority has also rejected the applicant's appeal. We have already found that both the Disciplinary and Appellate Authorities have failed to consider any of the pleas raised by the applicant in his written statement of defence, representation against the report of the Inquiry Authority, and appeal. The Disciplinary and Appellate Authorities have also failed to consider the plea taken by the applicant with respect to charge no.4. Considering the facts and circumstances of the case in the light of the decisions which have been discussed in paragraphs 11 to 15 of this order, we find that the punishment of 'removal from service' imposed upon the applicant is so excessive and outrageously disproportionate to the charges held proved against him as to shock our judicial conscience. Therefore, the orders passed by the Disciplinary and Appellate Authority are liable to be interfered with.

17. In the light of our above discussions, we quash the orders passed by the Disciplinary and Appellate Authorities, and remit the matter back to the Disciplinary Authority to reconsider the same and pass fresh order imposing on the applicant any of the penalties prescribed in the Rules other than the penalty of 'removal from service' or 'dismissal from service'. We also direct the respondents to reinstate the applicant in service forthwith. On the facts and in the circumstances of the case, we further direct that the applicant shall be deemed to be continuing under suspension during the intervening period between the date of removal from service and the date of

reinstatement in service, and that the period of suspension shall be treated as not spent on duty. The respondents shall comply with the directions contained in this order within three months from today.

18. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(DR.B.K.SINHA)
ADMINISTRATIVE MEMBER

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