CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01268/2018 Decided on: 23.10.2018

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Gurpal Singh son of Sh. Amar Singh, aged 55 years, posted as Goods Guard, Amritsar, resident of H.No. 18,Gali No. 18, Gobindpura, Near Purani Chungi, Chheradha Road, Amritsar, Punjab, Group-C, Pin-143001.

Applicant

(By: **MR. VIPIN MAHAJAN, ADVOCATE)**

Versus

1. Union of India through the Secretary to Government of India, Ministry of Railway, Rail Bhawan, New Delhi, Pin-110001.
2. Chief Operating Manager, Northern Railway, Baroda House, New Delhi, Pin-110001.
3. Additional Divisional Railway Manager, Northern Railway, Ferozepur, Pin-152001.
4. Divisional Operating Manager, Northern Railway, Ferozepur, Pin-152001.

Respondents

O R D E R (oral)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the orders dated 17.5.2018 (Annexures A-1), vide which revision petition has been dismissed and order dated 1.11.2017 (Annexure A-2) vide which appeal filed by him has been dismissed and order dated 11.2.2017 (Annexure A-3), vide which penalty of compulsory retirement has been imposed upon him.

2. The facts, which led to filing of the instant O.A are that applicant was working as Guard in the Railway. A charge sheet dated 10.2.2017 (Annexure A-4), for imposition of major penalty under rule 9 of Railway Servants (Discipline & Appeal)

Rules, 1969, was issued against him that he had committed 8erious irregularity in failing to sign off (CMS KIOSK) in the lobby after working Train No. 11058 DN and when breath analyzer test was conducted, it was found more than 100, as noticed by Railway Board Team under Advisory Safety during inspection at Ambala on 18.5.2016, which was alleged to be gross negligence, lack of devotion to duty and irregular / irresponsible working on his part, thereby violating para 3(I)(ii)(iii) of the Railway Service Conduct Rules, 1966. The applicant submitted a reply denying the charges, on 18.4.2018 and he also asked for supply of inspection report dated 18.5.2016, which was given to him. Ultimately, inquiry officer submitted his report dated 4.10.2017 (Annexure A-7), providing the charges against the applicant on the basis of breathe analyzer test, as per which alcohol level was 101.1 mg per 100 ml. The applicant submitted a representation against the same on the ground that he had taken some medicine (calcaria phos) on account of illness, which smelled of alcohol. However, disciplinary authority passed order dated 11.8.2017 (Annexure A-3), imposing the penalty of compulsory retirement upon him. The applicant filed an appeal on 24.8.2017 (Annexure A-9), which was partly allowed vide order dated 24.10.2017 (Annexure A-2)modifying the penalty to demotion as Good Guard with grade pay of Rs.2800 (from Rs.4200 drawn by him) for three years, with cumulative effect. The revision petition filed by him on 5.12.2017 (Annexure A-11) was dismissed vide order, Annexure A-1. Hence the O.A.

3. The learned counsel for the applicant tried to impress upon us to believe that the charges against the

applicant have not been proved, as inquiry report is only of two pages, without discussing any evidence and punishment of reduction in grade pay is too harsh, as compared to the charge alleged against him. The grounds raised by applicant have not been considered by the appellate and Revisional Authorities. It was also vehemently argued that similar charge was alleged against Parmatma Singh (who was alleged to be habitual drunkard), who was left with lighter punishment, as his graded pay was not reduced, whereas applicant has been reduced from Level 6 to level 5, which is discrimination and as such order is discriminatory.

4. A perusal of the impugned orders would show that initially the disciplinary authority had imposed the penalty of removal from service considering the fact that the applicant was found to be having consumed liquor as per the test conducted by the authorities. However, though observing that in such like cases only punishment to be imposed is removal from service, yet the punishment was reduced to reinstatement of applicant as Goods Guard with grade pay of Rs.2800 for 3 years. It was clearly mentioned that the applicant was found to be in an intoxicated condition, which in a given situation, may have endangered the lives of passengers on the indicated train, which fact cannot be ignored lightly. The Revisional Authority has explained that the applicant has not been able to present any new fact, which may warrant review of the punishment in question.

5. It is by now well settled law that it is for the disciplinary authorities to decide on the punishment and the courts or Tribunals should not interfere with the same unless it is

found that the same pricks the conscience of a prudent man. In other words, there is no complete bar in interference by a court of law or Tribunal in quantum of penalty upon a delinquent employee and such interference is dependent upon case to case basis. It has been held that ordinarily the court or tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but this rule has exception. If the penalty imposed is grossly disproportionate with the misconduct committed, then the court can interfere.

6. A three bench judgment of the Hon'ble Supreme Court in **B. C. CHATURVEDI VS. UNION OF INDIA** (1995) 6 SCC 749 has held that even though the Court/Tribunal, while exercising the power of judicial review cannot normally substitute their own conclusion on penalty and impose some other penalty, if the punishment imposed by the disciplinary authorities shocks the conscience of the High Court or the Tribunal it would be appropriate to grant the relief either directing the disciplinary, or the appellate authority to reconsider the penalty or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with reasons in support thereof.

7. In the case of **STATE OF MEGHALAYA & ORS. V. MECKEN SINGH N. MARAK**, AIR 2008 SC 2862, it was held that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority

unless shocks the conscience of the court, cannot be subjected to judicial review. Similar view has been taken in **DEPUTY COMMISSIONER, KENDRIYA VIDYALYA SANGTHAN AND OTHERS VS. J. HUSSAIN**, (2013) 10 SCC; **U.P. STATE ROAD TRANSPORT CORPORATION VERSUS VINOD KUMAR**, 2008(1) SCC 115 and **UNION OF INDIA AND OTHERS VERSUS GYAN CHAND CHATTAR**, 2009(12) SCC 78 that it is highly uncalled, for the courts of law to interfere in these discretionary powers of the Punishing Authority.

8. Our own jurisdictional Hon'ble High Court in CWP No.1154 of 2014 **UNION OF INDIA & OTHERS VS. RAGHUBIR SINGH & ANOTHER**, while examining an order passed by a Bench of this Tribunal on issue of interference in quantum of penalty has held that under the law Disciplinary Authority is the sole repository with whom lies the discretion to decide as to what kind of punishment is to be imposed. We find that the charges have been proved against the applicant on the basis of evidence available on record and it cannot be said from any angle that the findings recorded by the authorities are perverse. The applicant has been given full opportunity to defend himself in the proceedings. The authorities have passed speaking orders indicating as to how the charges have been proved and as to why there is no merit in the stand taken by the applicant in his defence. The appellate authority and Revisional Authority have also passed orders touching upon the points taken by the applicant in his defence. The applicant has not been able to point out any irregularity or illegality causing any prejudice to him in the enquiry proceedings and as such the same cannot be

interfered with including penalty which is found to be in consonance with the degree of charge alleged and proved against the applicant.

9. In the wake of the above position under the law, we do not find any grounds made out for issuance of even notice to the respondents and dismiss this O.A. in limine.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 23.10.2018

HC*