CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.1054 of 2012
Cuttack this the 2nd day of November, 2017

CORAM:
HON'BLE SHRI S.K.PATTNAIK,MEMBER (J)
HON'BLE DR.MRTYUNJAY SARANGI,MEMBER(A)

Jugal Kishore Nayak, S/o. Sri Kunja Bihari Nayak, aged about 39 years, resident of village-Namakani, Post Office-Bimala, PS-Telkoi, District-Keonjhar, Orissa last employed as Junior Engineer(Carriage and Wagon), East Coast Railway, Kantabanji

...Applicant

By the Advocate(s)-M/s.C.R.Nanda
M.K.Dash
M.Dash

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co. Rly.Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda

2. The Addl. Divisional Railway Manager, E.Co.Rly, Sambalpur, At/Post Office/P.S./District-Sambalpur

3. Senior Divisional Mechanical Engineer/E.Co.Railway, Sambalpur, At/PO/PS/District-Sambalpur

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER

DR.MRUTYUNJAY SARANGI,MEMBER(A):

The applicant was working as a Junior Engineer(Carriage & Wagon) in East Coast Railway, Kantabanji when he was removed from service in the year 2012as a culmination of disciplinary proceedings. He has challenged the orders of the

Disciplinary Authority and the Appellate Authority and has filed this O.A. praying for the following reliefs:

i) This Hon'ble Tribunal may be pleased to quash/set aside the order dated 05.09.2012(Annexure-10) passed by the respondent no.2 and the order of removal passed by respondent no.3 dated 14.06.2012 (Annexure-8) of the applicant from his services.

ii) This Hon'ble Tribunal may be pleased to direct the respondents to reinstate the applicant in his services and to give all the back wages and the consequential benefits to the applicant.

iii) Pass such other order/orders or direction/directions as this Hon'ble tribunal deems fit and proper in the bona fide interest of justice.

2. Facts of the case, as they appear from the O.A., are as follows:

The applicant was served with a Memorandum dated 21.01.2011(A/1) by the Sr. Divisional Mechanical Engineer, East Coast Railway, Sambalpur, the Disciplinary Authority, containing the following Articles of Charge.

Article-I

That Shri J.K.Nayak, Junior Engineer-II/C7W/KBJ, while functioning as such, has conducted misconduct in as much as:

That Shri J.K.Nayak, Junior Engineer-II/C&W/KBJ, while functioning as such, has violated Rule-3.1(ii) of Railway Service(Conduct) Rules, 1966 by refusing to

go to JMPW to take over the charge of 140 T BD Crane of KBJ Base at JMPW despite official instruction(s) from his respective Superior(s).

Article-II

That Shri J.K.Nayak, Junior Enginer-II/C&W/KBJ, while functioning as such, has conducted misconduct in as much as:

That Shri J.K.Nayak, Junior Engineer-II/C&W/KBJ, while functioning as such, has violated Rule-3.1(Iii) of Railway Service(Conduct) Rules, 1966 by refusing to go to JMPW to take over the charge of 140 T BD Crane of KBJ Base at JMPW despite official instruction(s) from his respective Superior(s).

Article-III

That Shri J.K.Nayak, Junior Engineer-II/C&W/KBJ, while functioning as such, has conducted misconduct in as much as:

That Shri J.K.Nayak, Junior Engineer-II/C&W/KBJ, while functioning as such, has violated Rule-3.1(iii) of Railway Service(Conduct) Rules, 1966 by not obeying the official instruction(s) of his respective Superiors to proceed to JMPW on 01.10.2010 to undergo Training on "Maintenance & Operation of 140 T B.D. Crane: at JMPW. refusing to go to JMPW to take over the charge of 140 T BD Crane of KBJ Base at JMPW despite official instruction(s) from his respective Superior(s).

The applicant wrote to the Disciplinary Authority on 6.3.2011 requesting for supply of certain Relied Upon Documents, to which the Disciplinary Authority gave a reply on 28.4.2011 furnishing copies of the relevant documents. The

applicant however alleges that some of the documents called for by him were not supplied to him. The applicant replied to the Memorandum of Charge on 21.5.2011 in which he denied the charges on the ground that he was not intimated about the Training Programme at JMPW and that he was suffering from physical ailment from 2.10.2010 and was under medical treatment at the Community Health Centre at Kantabanji. He also stated that the question of refusal to go to JMPW to take over the charge has no basis and that unwillingness on the part of the applicant was due to lack of his self-confidence to handle 140T B.D. Crane. He submitted that there is no misconduct on his part and the disciplinary proceeding against him should be dropped. On 4.6.2011 the applicant appealed to the Disciplinary Authority for change of the Inquiry Officer and by order dated 23.6.2011, the Disciplinary Authority appointed a new Inquiry Officer, who submitted his report on 10.5.2012. The applicant was served with the copy of the inquiry report on 12.5.2012. After considering the I.O's report and the statement of defence submitted by the applicant, the Disciplinary Authority imposed punishment of removal from service on the applicant on 14.6.2012. The applicant appealed against this order to the Appellate Authority under Rule-18 and 21 of the Railway Servants (D&A) Rules, 1968. The Appellate Authority vide his order dated 5.9.2012 confirmed the punishment of removal. Aggrieved by these two orders of the Disciplinary Authority and

the Appellate Authority, applicant has frilled the present O.A. praying for the relief as mentioned in Para-1 above.

3. The applicant has based his prayer for relief on the following grounds:

i) The impugned order of punishment removing the applicant from service was passed on 14.6.2012. But the Disciplinary Authority had already issued an order to Senior Section Engineer(C&W), East Coast Railway, Kantabanji by his CWC/SBP Office Order No.48 dated 13.06.2012 at 19.00 hrs. that the applicant has to be removed from service with effect from 14.6.2012. This makes it clear that the impugned order dated 14.6.2012 is premeditated and predetermined without considering the inquiry report and the statement of defence filed by the applicant.

ii) The I.O. had failed to act in a reasonable manner and conducted the inquiry in gross violation of the prescribed procedure. He asked leading questions to the witnesses.

iii) The Disciplinary Authority himself was involved in the same case and therefore, he should not have acted as the Disciplinary Authority in the disciplinary proceedings against the applicant. As per Board's letter No.E(D&A)90 RGS-123 dated 9.11.1990, the authority who is next higher in the hierarchy should have acted as the Disciplinary Authority.

iv) The orders of the Disciplinary Authority and the Appellate Authority imposing the punishment of removal is vitiated due to the non-consideration of the legality and propriety in the decision making process.

v) The charge sheet was issued and the I.O. was appointed by Shri N.R.Sahu, Senior Divisional Mechanical Engineer, Sambalpur. When the

inquiry report was submitted Shri J.K.Sahu who was deputed to look after the current duties of the post because Shri N.R.Sahu was sent for training, considered and confirmed the findings of the I.O. After that another officer Shri M.Srinivas who was placed in the same post passed the order of removal in violation of Master Circular – 67 which speaks that the authority looking after the current duties of a post cannot exercise disciplinary functions assigned to the said post.

vi) Although the I.O. has quoted the Sl.Nos. 86 and 87 of High Level Committee's recommendations, the non-supply of the aforementioned instructions to the applicant is a violation of the principles of natural justice and has vitiated the disciplinary proceeding.

vii) The non-supply of duty pass, letter of intimation of the dates of inquiry etc. is violative of the principles of natural justice and the orders of the Disciplinary Authority and the Appellate Authority are liable to be quashed on this count.

viii) Rule-10(2)(a) of Railway Servants (D&A) Rules, 1968 provides that the applicant should have been given 15 days' time to submit his representation to the findings of the Inquiry officer, but the applicant was given only 10 days' time.

ix) The applicant was under medical treatment of the Community Health Centre, Kantabanji for his physical ailment and had attached the reports of the Medical Officer in his statement of defence. However, this was not taken into consideration by the Disciplinary Authority and the Appellate Authority while passing the impugned orders.

x) The finding that the applicant refused to work is not based on evidence. On the other hand, the refusal of the applicant to work on 140 T B.D.Crane is due to his medical treatment and lack of self-confidence to handle such work. Therefore, the punishment of removal imposed on him is excessive, oppressive and violative of Article 14 of the Constitution of India.

4. Respondents in their counter-reply filed on 26.7.2014 have contested the claim of the applicant. It is their contention that the applicant was advised through proper channel viz., the Senior Section Engineer/C&W/KBJ to proceed to JMPW along with his superior without fail. But he did not deliberately turn up for shift duty commencing from 16.00 hrs. on 2.10.2010. He was therefore issued with a Charge Memo for major penalty and after following due procedure, the punishment of removal from service was imposed by the Disciplinary Authority which was upheld by the Appellate Authority. The applicant was supplied with all the relevant documents except those which were not available with the Disciplinary Authority. After receipt of the Relied Upon Documents, there was no further request from the applicant for any other document. The I.O. was changed on the request of the applicant. He was also given an opportunity to appoint a defence counsel. The I.O. conducted a preliminary sitting on 20.12.2011 and a second sitting on 1.5.2012. The applicant was asked for submission of his written brief on 1.5.2012. However, the applicant chose not to do so. The defence statement submitted by the applicant was taken

into consideration by the Disciplinary Authority and the Appellate Authority before passing final orders. Both the Disciplinary Authority and the Appellate Authority have passed speaking orders after carefully considering the statement submitted by the applicant and there is no illegality in their orders. The applicant had deliberately not turned up for his shift duty commencing from 16.00 hrs. on 2.10.2010 and he deliberately absented himself and refused to carry out the work assigned to him. The punishment imposed on him is justified and legal. He had not intimated about his illness and his inability to the Railway Administration in time. He simply attended office on 3.10.2010 and submitted a letter giving his unwillingness. The applicant's plea about the of self-confidence on his part to handle 140T B.D. Crane is untenable since all the Technical Supervisors are required to handle 140T B.D. Crane and none of them had experience on the crane prior to joining the Railways. The applicant had been offered training on the 140T B.D.Crane as was being done to other Supervisors. After refusing to attend to his work in operating 140T B.D. Crane, the applicant has offered baseless excuses and personal preference and therefore, the punishment imposed on him is justified. The O.A., therefore, should be dismissed as devoid of merit.

5. We have heard the learned counsels for both the sides and perused the documents submitted by them. The applicant has urged the ground of incompetent Disciplinary Authority for

quashing and setting aside the punishment order. The Ministry of Railways, Railway Board, has issued instructions in Master Circular No.67 dated 20.10.2002 in which Para-2(e) states that if the Disciplinary Authority of a charged official is also involved in the same case then he should not act as the Disciplinary Authority in the said case. The authority who is next higher in the hierarchy should act as the Disciplinary Authority. (Board's letter No.E(D&A)90 RG6-123 dt: 9.11.90). Although the applicant has taken the plea that the Disciplinary Authority "*was involved*" in the incident relating to his refusal to operate 140T B.D. Crane, there is no document to show such an involvement. If the Disciplinary Authority as the Supervisory Officer had ordered him to operate 140T B.D. Crane, that cannot be taken as his involvement in the incident nor his participation in any way which would affect the findings of the I.O. to establish the conduct of the charged official nor can it reasonably be construed as bias against the charged official to vitiate the disciplinary proceedings.

6. The applicant has taken the plea that certain Relied Upon Documents were not provided to him. However, a perusal of the case records shows that all the relevant documents were made available to him and there is no justifiable ground to prove that the inquiry was vitiated because of non-supply of the necessary documents to the applicant. On the other hand, the applicant had been given an opportunity to engage a defence counsel

and the inquiry has been conducted as per rules and instructions. The report of the I.O. was communicated to the applicant to provide his defence. The orders passed by the Disciplinary Authority as well as the Appellate Authority are reasoned and detailed orders and cannot be the ground in the present case for holding the disciplinary inquiry as illegal or biased and to that extent, we find no justification for interfering with the impugned orders dated 14.06.2012(A/8) and dated 05.09.2012(A/10) passed by the Disciplinary Authority and the Appellate Authority, respectively.

7. Applicant has taken the plea that he had enclosed a Medical Certificate dated 2.10.2010 from the Medical Officer, Community Health Centre, Kantabanji about his illness and some medicines were prescribed to him. The applicant has also enclosed a document at A/11 which is a Memo dated13.06.2012 issued by the Senior Section Engineer, (C&W), East Coast Railway, Kantabanji, which reads as follows:

> "You have to be removed from service with effect from 14.06.12.
>
> This is as per CWC/SBP O.O.No.48 dated 13.06.12 as given below.
>
> From To
>
> Sr.DME/SBP
> SSE/C&W/KBJ
>
> Sri S.K.Nayak, JE/C&W/KBJ has to be removed from service with effect from 14.06.12".

8. Although the applicant has pleaded that this shows premeditation on the part of the Disciplinary Authority in taking a decision on the disciplinary case against the applicant, this does not seem to be strong enough to prove vitiation of inquiry proceedings, because this Memo has not been issued by the Disciplinary Authority and appears to be preliminary preparation format. The process of removal of the applicant from service on the next day happens to be the date on which the Disciplinary Authority passed the order. It is quite possible that the Disciplinary Authority had already taken the decision to impose punishment of removal on 13.6.2012 and had signed the order on 14.6.2012, one day thereafter. We are not inclined to accept this as a measure of lacuna in the disciplinary proceedings to the extent of holding the proceeding as illegal and invalid. It is pertinent to note that the final defence statement had been submitted by the applicant as early as 25.5.2012 and it is not unreasonable to conclude that the Disciplinary Authority had already decided to impose the punishment of removal on 13.6.2012 and sent the order on 14.6.2012. We therefore find no illegality in the order passed by the Disciplinary Authority and the Appellate Authority.

9. However, the question of proportionality of punishment has been raised by the applicant. During the argument also it was vehemently argued by the learned counsel for the applicant that the punishment of removal from service is harsh and

disproportionate. In a catena of judgments, the Hon'ble Supreme Court and other Hon'ble High Courts have held that a punishment order should not be interfered with by the judicial forum unless it shocks the conscience and appears to be harsh to a common man of ordinary prudence.

10. The Courts/Tribunals have a very limited scope of judicial review in the matter of disciplinary proceedings as laid down by the Hon'ble Supreme Court in a catena of judgments. It is appropriate to quote some of the observations of the Hon'ble Supreme Court in a few cases on the issue of scope of judicial review in the matter of disciplinary proceedings.

In *Surender Kumar vs. Union of India (2010) 1 SCC 158,* the Hon'ble Supreme Court has clearly laid down that the only scope of judicial review is to examine the manner in which the departmental inquiry is conducted.

In *Union of India vs. Flight Cadet Ashish Rai (2006) 2 SCC 364*, the Hon'ble Supreme Court has held as under.

> "Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers: (c) committed an error of law; (d) committed breach of the rules of natural justice; and € reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administration action is subject to control by judicial review in the following manner:

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

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

In *Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC*, the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

Similarly, in *B.C.Chaturvedi vs. Union of India (1995) 6 SCC 749*, the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether 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 or 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 whether 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 mold the relief so as to make it appropriate to the facts of each case.

In *Union of India vs. G.Ganayutham (1997) 7 SCC 463* the Hon'ble Supreme Court has held:

> "To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters has not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test"

11. Viewed in the context of judicial pronouncements in the above referred cases, we find that in the present O.A. there is no scope for interference in the orders of the Disciplinary Authority as well as the Appellate Authority, since there is no procedural impropriety or illegality in the orders passed by them.

12. Coming to the issue of proportionality of punishment, we have already referred to the Wednesbury test as enunciated in Ganayutham case (supra). In Paragraph-32 of the said judgment, the Hon'ble Supreme Court has observed as under.

> "32.Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in 'outrageous' defiance of logic".

The Hon' Supreme Court also observed in Ganatyutham case (supra) that it had interfered with the punishment in *Ranjit Thakur case [(1987) 4 SCC 611]* only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational and the court had felt that, on facts, Wednesbury and CCSU tests were satisfied.

In *Indian Oil Corporation Ltd. Vs. Ashok Kumar Arora (1997) 3 SCC 72* the Hon'ble Apex Court had decided that it will not intervene unless the punishment is wholly disproportionate.

In Halsbury's Laws of England it has been laid down that it has become customary on the part of judicial dispensation to apply Wednsbury test. The grounds for judicial interference have been laid down in *Council of Civil Service Unions v. Minister*

for Civil Service, 1985 AC 374 in which Lord Diplock proclaimed "one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality", the second ground 'irrationality" and the third 'procedural impropriety" has attained a degree of finality in deciding issues on proportionality.

13. The issue of applying the principle of proportionality has been examined by the Hon'ble Supreme Court also in *Union of India v. K.G.Soni (2006) 6 SCC 794 and Ramanuj Pandey v. State of M.P. (2009) 7 SCC 248.* The overriding trend of the judicial pronouncement on this issue is that it is for the Disciplinary Authority or the Administrative Authority to decide the quantum of punishment in a case of misconduct and the role of the Court is only secondary. The Court/Tribunal can interfere with the quantum of punishment only if the punishment is outrageously disproportionate, illogical or shocking.

14. Taking into account the facts and points of law in the present O.A., we find no reason to interfere with the findings of the Disciplinary Authority and the Appellate Authority holding the applicant guilty of the charges framed against him. However we take note of the fact that the applicant had visited the Community Health Centre at Kantabanji and was prescribed medicines one day prior to the date of the incident. We are therefore of the view that

considering the nature of the offence and the extenuating circumstances, the punishment imposed on the applicant is unduly harsh and disproportionate and needs to be revisited. The Respondents are directed to reconsider the degree or gravity of the offence committed by the applicant and the state of his health and examine whether a lesser punishment than removal from service could serve the interest of justice. They are directed to complete this exercise within a period of 12 weeks from the date of receipt of this order.

15. The O.A. is disposed of with the above direction, with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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