

Reserved

Original Application No.200/00456/2014

Jabalpur, this Thursday, the 3rd day of May, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Pramod Kumar Shrivastava,
S/o Keshav Das Shrivastava, aged about 58 years,
Compulsory Retired, Head Train Clerk,
R/o QR. No.129, Abhishek Nagar, Ujjain (MP) **—Applicant**

(By Advocate – Ms. Nikita Srivastava)

V e r s u s

1. Union of India, Through the General Manager, Western Railway, Mumbai, Churchgate, Mumbai. Pin Code – 400008.
2. Chief Vigilance Officer, Western Railway, Head Quarter Churchgate, Mumbai. Pin Code 400008.
3. Chief Vigilance Inspector, Western Railway, Head Quarter Churchgate, Mumbai. Pin Code 400008.
4. Divisional Operating Manager, D.R.M. Office Ratlam, Western Railway, Ratlam (MP).
5. Senior Divisional Operating Manager, D.R.M., Office Ratlam, Western Railway, Ratlam (MP).
6. Station Manager, Nagda, District Ujjain, Western Railway.
7. ADRM, DRM Office, Ratlam, Western Railway, Ratlam (MP).
8. Chief Operating Manager, Headquarter Western Railway, Churchgate, Mumbai. Pin Code - 400008

(By Advocate –Shri Swapnil Ganguly)*(Date of reserving the order:16.11.2017)***O R D E R****By Navin Tandon,AM**

By filing this Original Application, the applicant has challenged the order of penalty of compulsory retirement imposed upon him after holding full fledged departmental enquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968.

2. The brief facts of the case are that the applicant was appointed under the respondent-railways on 23.03.1983. While he was working as Head Train Clerk (HTNC) he was served with a charge sheet dated 04.01.2009 (Annexure A-6) alleging that he “had stolen and misused the first class Pass No.B/706989 which was missing on 09.11.1994 from Coal distribution Unit Ratlam and prepared the pass in favour of Shri Raj Kumar HTNC Ujjain from Jabalpur to Ujjain valid upto 09.07.06 and back and he made fake signature & seal of SM UJJain on the privilege pass. He was posted at RTM during year 1994 to 1996”. After holding enquiry the charge was partly proved against the applicant by the enquiry officer vide his report dated 25.4.2011 (Annexure A-8). After getting enquiry report, the disciplinary authority recorded his

observations on it and sent it to the applicant to submit his final defence. After considering the final defence submitted by the applicant, the disciplinary authority, after holding that the charges are undoubtedly proved, imposed the penalty of compulsory retirement on the applicant vide order dated 04.01.2012 (Annexure A-9). The appeal and revision submitted by the applicant were rejected vide orders dated 15.04.2013 and 07.03.2014 (Annexures A-13 & A-15) respectively. Hence, this Original Application.

3. The applicant has prayed for the following relief in this Original Application:-

“8.(I) To Quash the charge-sheet dated 04-01-2009 (Annexure A-6), and further be quashed the impugned order dtd 04-01-2012 [Annexure A-9 and Annexure A9(a)] together with the final order of Revision petition dtd 7-3-2014 (Annexure A-15).

8.(II) To call the entire record of the applicant’s case.

8.(III) To direct the respondent for reinstatement of applicant in his service with full back wages and all the monetary benefits along-with.

8.(IV) Any other order/directions which the Hon’ble Tribunal may deem fit and proper in favour of the applicant granting costs may be passed.

(V) To quash the DAR Inquiry Report dated 25.4.2011 marked as Annexure A-8”

4. The applicant has contended the vigilance team seized the pass but fined only 3 members out of the 7 present members and their statement was recorded on a sheet of paper which included the signature of Rewat Singh, Divisional Operating Manager

(DOM). All the 7 members were then set free. The persons caught in the AC Coach and reservation clerk were not called upon during the course of enquiry. The respondent No.4 was neither authorized to issue the charge sheet nor was holding any position in Ratlam Office at the relevant point of time. The missing passbook belonged to Western Railway Line while the fake pass book caught by the vigilance team belongs to Foreign Railway Line. During the enquiry, the applicant was asked to copy the reservation form with the name of the 6 out of 7 mentioned people who were traveling on the said pass, which was seized by the CVI. The applicant did so. However, the respondents misused the form that was re-written by him by sending it to the Government Examiner of Questioned Document, Hyderabad for opinion of writing specialist.

4.1 The applicant has further contended that the enquiry officer found that the allegations are partly proved and hence the departmental enquiry is completely vitiated as suffering from non-compliance of principle of natural justice. In this regard, he has placed reliance on the decisions of Hon'ble Supreme Court in the matters of **Gorkha Security Services Vs. Govt. of NCT Delhi and others**, (2014) 9 SCC 105.

4.2 The applicant has further contended that the action of the respondents suffers from the principle of bias on the ground that

the applicant has been asked not to report to the duty from 5th January,2012, whereas the applicant has been asked to vacate and leave the office from the mid-night of 4th January 2012 in the most unparliamentarily manner which only denotes the high headedness of the respondent-authority who conducted themselves as per their whims and caprices and hence the action of the respondents suffer from principle of bias as has been laid down by the Hon'ble Supreme Court in the matters of **Union of India Vs. Sanjay Jethi**, (2013) 16 SCC 116.

5. On the other hand the respondents have submitted that the Chief Vigilance Inspector along with Vigilance team of West Central Railway had inspected the train no.11472 in AC II Coach wherein seven persons were traveling on a single PNR number which was generated on one pass No.B706989. The vigilance team seized the pass and three persons those who were unauthorisedly traveling in the aforesaid pass, requisite fines were made. The Vigilance Department thereafter registered the aforesaid case and a charge sheet was issued to the applicant on 04.01.2010. After the departmental enquiry, the enquiry officer held the charge as partly proved. Since the disciplinary authority was not satisfied with the enquiry report, he issued a disagreement note to the applicant, and after analyzing applicant's reply, a speaking order was passed

holding the charge as proved and imposing upon the penalty of compulsory retirement on the applicant.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents available on record.

7. On perusal of the enquiry report, we find that the enquiry officer in his enquiry report has given the following findings in respect of the applicant:

“(1). During the vigilance check conducted by the vigilance team of WCR, Shri Rajesh Kumar Verma was found traveling unauthorized with other member in A-1 coach of train 1472 on 28-06-06 on Railway 1st class Pass No.B-706989 PNR No.820-3252352. The said Pass and PNR ticket was seized by CVI-WCR Shri S.N.Sharma and EFT D-880206 was issued by the coach conductor Shri S.N.Ali HQ/JBP [PW-1A-3].

(2). During further investigation by CVI-WCR Shri Vinay Singh the original Requisition form RUD-7 of PNR ticket No.820-3252352 was collected. On this R/Form P&T No.2555272 was found written. The same P&T No. was allotted to Shri Pramod Kumar Srivastav HTNC[MHOW] as per the certificate issued by BSNL [RUD-9]. It is therefore evident that the R/Form RUD-7 pertains to Shri P.K.Srivastav.

(3). Shri Pramod Kumar Srivastav has admitted in his statement during investigation by CVI-WCR [RUD13A15] that the above P&T telephone No. was allotted to him by BSNL Ujjain when he was posted at UJN in Railway Qr No. 254/C.

(4). For further confirmation the writing samples of Shri Pramod Kumar Srivastav and R/Form RUD-7 and the said Railway 1st class Pass No.706989 were sent to Govt. Examiner of questioned documents [GEQD] Hyderabad. GEQD Hyderabad Report dated 04-09-09 confirmed that

writing on R/Form RUD-7 is that of Shri Pramod Kumar Srivastav.

(5). The said Pass No.B-706989 RUD-6 is 1st class privilege Pass available from 10/3/06 to 9/7/06 issued in the name of Shri & Srimati Raj Kumar HTNC-UJN with four unmanned daughters 22,19,12,15 and one son 6 Years from Jabalpur to Ujjain and back issued from office of SM-UJN WCR as per stamp there on.

(6). The JCR No.820-3252352 for train No.1472 dated 28-08-06 from JBP-BPL is in accordance with the R/Form RUD-7. The R/Form RUD-7 is having telephone number of Shri Srivastav. It means that P.K.Srivastav who was in possession of R/Form having P&T telephone number was in possession of the said Pass [RUD P-6].

(7). The said Pass No.B-706989 is the part of the Pass Book containing foil B-706903 to 707000, which was lost as per FIR No.CDI/11/94 dated 14.11.94 to SO/GRP [RUD-8] by CDI-RTM. At that time Shri Srivastav was at RTM and also working in the same office as CDI-RTM.

(8). The said pass and the JCR PNR from the possession of Srivastav reached to the hands of Shri Rajesh Kumar Verma who was caught red handed mis-using the same by traveling by train 1472 dated 28-06-08 between JBP-BPL is thus established. However, how the pass came in hands of Shri Srivatava who got issued JCR in name favor of Shri Rajesh Kumar Verma is not established. Hence charge is partly proved.

(9). In regard to CO's Brief the remarks on relevant Para are given as under –

(i) The trial R/Form is different than the R/Form RUD-7 submitted for preparing JCR as the same is having written PNR number and some other entries.

(ii) Reservation clerk did not appear for the Inquiry as he was neither PW nor there was any relevant demand from CO to produce as DW.

(iii) SF 5 No GOP E 308/161/2010-09 is dated 12/09/04-01-10. It means that form is written [typed] on 12/09 and issued on 04-01-2010. The Inquiry has been conducted on the basis of issue dated of 04.01.10 with participation and acknowledgement on the proceeding by CO

7. Conclusion:-

Charge Proved Partly".

8. We find on perusal of the above finding of the enquiry officer, that the grounds raised by the applicant while submitting his defence, have already been dealt with. The disciplinary authority recorded his observations on the report of the enquiry officer and sent the same to the applicant to submit his defence. Only after considering various facts into consideration as well as the reply submitted by the applicant against the disagreement note, the disciplinary authority imposed the penalty of compulsory retirement upon the applicant with immediate effect. Thus, the principles of natural justice were duly complied with while passing the impugned penalty order. The appeal as well as revision-petition submitted by the applicant were duly considered and rejected.

9. The law relating to scope of judicial review in disciplinary proceedings is very well settled by Hon'ble Supreme Court in the matters of **B.C.Chaturvedi Vs. Union of India**,(1995)6 SCC 749, wherein it has been observed as under :-

“(12). Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in 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 nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings.* Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. *The disciplinary authority is the sole judge of facts.* Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. *The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence* and to arrive at its own independent findings on the evidence....”

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

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(18)...the disciplinary authority and on appeal the appellate authority, being fact finding *authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.* The High Court/Tribunal, while exercising the power of judicial review, *can not normally substitute its own conclusion on penalty and impose some other penalty.* If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the

relief, either directing the disciplinary authority/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof”.

(emphasis supplied by us)

10. In the instant case we find that the enquiry has been held in accordance with the provisions of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant could have had any grievance if the respondents had failed to follow the principles of natural justice as required while passed the impugned order of penalty. In this case since the disciplinary authority did not agree with the findings of the enquiry officer, a copy of the disagreement note was duly served upon the applicant, and only after considering applicant's reply, the disciplinary authority imposed the penalty of compulsory retirement upon the applicant. As such, the principles of natural justice were fully complied with. Thus, if an individual receives fair treatment, then it is not open to us to ensure that the conclusion which the authority reaches is necessarily correct in the eye of law. In the instant case while imposing upon the penalty of compulsory retirement on the applicant the disciplinary authority had taken various facts into consideration, as has been narrated in the impugned order itself. Thus, the findings and conclusions

recorded by the disciplinary authority cannot be said to be without any basis.

11. Thus, considering the settled legal position, as narrated above, and the facts of the present case as discussed above, we are of the considered view that no irregularity and illegality has been committed by the respondents while passing the impugned orders.

12. As regards the reliance placed by the learned counsel for the applicant on the decision of **Gorkha Security Services** (supra) we find that said case relates to blacklisting of contractors. In the said case their lordships held that when it comes to the action of blacklisting which is termed as “civil death” it would be difficult to accept the proposition that without even putting the noticee to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT. Whereas in the instant case the disciplinary authority had duly recorded his observations on the report of the enquiry officer and sent the same to the applicant to submit his defence and only after considering various facts into consideration as well as the reply submitted by the applicant against the disagreement note, the disciplinary

authority imposed the penalty of compulsory retirement upon the applicant with immediate effect. Thus, the principles of natural justice were duly complied with in the instant case.

13. As regards the reliance placed on the applicant on the decision in the matter of **Sanjay Jethi**, (supra) we find in the said case the documents were not given to the individual concerned and the mandatory procedure under AR 180 was not followed by the authorities with regard to those documents which were subsequently annexed to the report. Therefore, the matter was remanded back for further enquiry.

14. The Hon'ble Supreme Court in the matters of **Board of Mining Examination Vs. Ramjee** (1977) 2 SCC 256 (SCC pp. 258 & 262, paras 1, 13 & 14) have held thus :

“1. If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

* * *

13. ... Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. **If fairness is shown by the decision-maker to the man proceeded against, the**

form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt—that is the conscience of the matter.

14. ... we cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity.”

(emphasis supplied by us)

15. In the instant case we find that the applicant has totally failed to demonstrate as to how principles of natural justice have been violated in his case and the authorities have acted against him with bias. Thus, the reliance placed by the applicant on the decisions of Hon'ble Supreme Court in the matters of **Gorkha Security Services** (supra) and **Sanjay Jethi** (supra) are totally misplaced.

16. In the result, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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