

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/70/2012**Jabalpur, this Friday, the 18th day of May, 2018**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Deepak Dubey (Deceased)

Represented through LRs

1A Abha Dubey W/o Late Shri Deepak Dubey

Aged about 41 years

1B Ashwin Dubey,

S/o Late Shri Deepak Dubey Aged about 11 years

1C Aditi Dubey

d/o Late Shri Deepak Dubey

aged about 8 years

Both (2) and (3) through their legal and

Natural Guardian-Mother

Abha Dubey W/o Late Shri Deepak Dubey

All r/o 565, Narayan Nagar,

Galauwa Chowk Garha,

Jabalpur (M.P.)

-Applicants(By Advocate –**Shri Deepak Panjwani**)**V e r s u s**1. Union of India, Through General Manager
West Central Railway Jabalpur M.P. 4820012. The Divisional Railway Manager
West Central Railway Jabalpur M.P. 4820013. Divisional Commercial Manager
West Central Railway, Jabalpur 4820014. The Sr. Divisional Commercial Manager
West Central Railway, Jabalpur 4820015. A.D.R.M. West Central Railway
Jabalpur 482001**- Respondents**(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order: 02.04.2018)

ORDER**By Navin Tandon, AM:-**

The Original Application was filed by Shri Deepak Dubey. However, during the pendency of this Original Application, he unfortunately expired on 03.04.2016 and thereafter legal heirs have been brought on record.

2. The original applicant Late Shri Deepak Dubey was aggrieved by imposition of penalty of removal from service and rejection of appeal. Hence, this Original Application has been filed.
3. The applicants in this Original Application have prayed for the following relief:-

“8.1 To quash the order dated 1/05/2009 (Annexure A-1) passed by respondent No.3; order dated 26.03.2010 (Annexure A-2) passed by respondent No.4 and order dated 05.08.2011 (Annexure A-3) passed by Respondent No.5 in their entirety in the interest of justice.

8.2 To direct the respondents to reinstate the applicant as Senior Booking Clerk granting him all consequential benefits along with exemplary cost and interest @ 18 % per annum on arrears of pay from the date of his removal till the date of payment.

8.3 Any other order or direction which this Hon'ble Court may be pleased to deem fit and proper.”

4. The deceased employee Late Shri Deepak Dubey was working with the respondents as Senior Booking Clerk. He was issued a major penalty charged memorandum on 12/14.09.2007 (Annexure A-4) with the following two charges:-

“Article 1:-

He overcharged Rs.10/-(Ten) to decoy passenger (Shri Vishram Singh) while issuing unreserved four adult and one child II mail/express tickets of Bina Station.

Article-2:-

Rs. 56/- (Fifty Six) were found excess in his railway cash which were remitted in sundry vide money receipt No.512514 dated 29/05/2007.

Thus, by the above acts of omission and commissioner Shri Deepak Dubey, Sr. B.C. failed to maintain absolute integrity, devotion to duty, and acted in a manner unbecoming of a railway servant thereby contravened the provision of rule No.3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966.”

5. The inquiry against the deceased employee was conducted by the Inquiry Officer nominated to do so. The Charged Official (for brevity ‘CO’) did not attend the inquiry on any date except once i.e. on 10.06.2008. The inquiry officer in his findings has proved both the article of charges. The disciplinary authority has imposed the penalty of removal from service vide order dated 01.05.2009 (Annexure A-1) which has been upheld by the appellate authority and the revising authority vide order dated 26.03.2010 and 05.08.2011 (Annexure A-2 and A-3) respectively.

6. The applicants in this Original Application has submitted that CO had denied all the charges leveled against him and had asked for “authenticated” copies of relied upon documents. CO

could not attend the enquiry as he was suffering from Jaundice. The inquiry was completed in a dramatically haphazard manner in two days i.e. on 24th and 25th July, 2008. At that time the charged employee was admitted for treatment in Victoria Hospital, Jabalpur. It has further been mentioned that even though the disciplinary action was taken on the basis of vigilance advice, the penalty was imposed without referring the same to the vigilance, which is against the procedure and rules. Further it has been submitted that the punishment is too harsh compared to the gravity of the charges imposed upon the applicant. It has also been submitted that the revising authority (respondent No.5) has made wrong averment in his order and has not decided the representation on merit basis.

7. The respondents, in their reply, have brought out that the decoy check was conducted at Madan Mahal Station booking office on 29.05.2007 taking the help of two independent persons- one as decoy passenger and other as independent witness to witness the transaction between the decoy passenger and the Booking Clerk, Madan Mahal, while issuing the ticket. Accordingly test check Memo No.1 was prepared. Total Rs.1090/- were handed over to decoy passenger. The decoy passenger was asked to purchase 4-1/2 tickets of Faridabad Station. The CO

demand and accepted Rs.412/- from decoy passenger against the correct fare Rs. 402/- and thus overcharged Rs.10 to decoy passenger. Thereafter the decoy passenger along with independent witness reported the matter to Vigilance team.

7.1 Railway cash and private cash of the CO was checked by the Vigilance Team where Rs.112/- was produced against the declared private cash of Rs.250 i.e. Rs. 138/- less in private cash. He found possessing of Railway cash of Rs.6977/- (net cash Rs.6893/- + ticket value of Rs.84 of IInd Mail/Express of Piparia Station) against the correct accountable of Railway Cash of Rs.6921/-. Thus, Rs.56/- found excess in his Railway cash which were remitted in sundry account on 29.05.2007.

7.2 The statements of the CO, decoy passenger and independent witness were recorded by the Vigilance Inspector. The major penalty charge sheet was issued to the CO by the disciplinary authority on 12/14.09.2007 along with all the relevant relied upon documents. He submitted his representation dated 23.09.2007 denying all the charges leveled against him. He also asked for authenticated relied upon documents. The respondents submit that all relevant relied upon documents were handed over to the CO alongwith the charge sheet.

7.3 The respondents have further stated that disciplinary authority has appointed inquiry officer vide order dated 12.10.2007. The inquiry officer has fixed the date of enquiry several times i.e. on 12.11.2007, 26.11.2007, 04.02.2008, 04.04.2008, 10.06.2008, 24.07.2008 and 25.07.2008. But Shri Deepak Dubey had attended the inquiry once i.e. on 10.06.2008 and informed verbally that he was suffering with jaundice therefore he could not attend the inquiry on the earlier dates i.e. prior to 10.06.2008. But he did not submit any medical certificates or papers in support of his above claim. The inquiry officer has given him opportunity to contact some persons to act as his Defence Helper (ARE) but he could not succeed. The stipulated period for nomination of ARE was to be made within 20 days from the date of appointment of inquiry authority, which was expired on 02.11.2007. The evidence of PW1, PW2 and PW3 was recorded on the same day i.e. 10.06.2008. The evidences of witnesses were recorded in the presence of charged employee and he was given liberty to recall these witnesses by giving a written submission directly to the inquiry officer on or before 30.06.2008. On 30.06.2008 no written submission from the applicant was received to recall or cross examine the witnesses.

7.4 Since the inquiry proceedings were delayed due to absence of the CO, the inquiry officer proceeded against him ex-parte. According to the inquiry report, on scrutiny of the documents and the statement made by the witness, the two charges leveled against him were proved. The same was forwarded to the disciplinary authority vide letter dated 08.10.2008. The copy of inquiry report along with statement of prosecution witnesses were handed over to CO vide letter dated 19.11.2008 with instruction to submit his representation on the same within 15 days. But he has not submitted his representation to the disciplinary authority. The disciplinary authority has imposed the punishment of removal from service upon the CO vide order dated 01.05.2009 (Annexure A-1). The CO had preferred appeal dated 05.06.2008 which was rejected vide order dated 26.03.2010 (Annexure A-2). He has also preferred revision petition before revising authority but the same was rejected vide order dated 05.08.2011 by way of detailed and speaking order. Hence this Original Application has no substance and is liable to be dismissed being devoid of merit.

8. Heard the learned counsel for the applicant as well as the learned counsel for the respondents. We have carefully perused the pleadings, documents and rejoinder filed by the applicant.

9. This is a case of decoy check conducted by the vigilance department, wherein they found the deceased employee over charging from passengers. Also the official cash was also more than what should have been with him.

10. It is observed that the inquiry proceedings have been done as per the rules prescribed. The CO did not participate in the said inquiry except on one date i.e. 10.06.2008. On the said date i.e. 10.06.2008, PW1, PW2 and PW3 were examined and the CO was given full opportunity for cross-examining the same. However, he neither cross-examined the witnesses on that date nor requested for recall of witnesses on a later date.

10.1 The CO had not nominated any defense helper. On 13.08.2008, he requested professional advocate to be engaged to assist him in the inquiry. The inquiry officer has communicated to him vide the notice for regular hearing dated 20.08.2008 that accordingly to Rule 9(13) of the Railway Servant (Discipline & Appeal) Rules, 1968 the Railway servant (to whom the charge-sheet has been issued) shall not engage a legal practitioner to present his case. Hence, no professional advocate is allowed as per the extant rules.

10.2 Even though the CO mentioned that he was suffering from Jaundice, he did not produce any documents supporting his claim to the inquiry officer.

10.3 Learned counsel for the respondents raised a point that the CO was reportedly taking treatment from Victoria Hospital, whereas Central Hospital of WCR is in the same vicinity. Why the deceased employee did not take treatment in Railway Hospital has not been explained.

11. From the above, we are of the view that the inquiry proceedings were completed after giving full opportunity to the CO to defend his case.

12. The Hon'ble Supreme Court in the matters of ***Rajasthan Tourism Development Corporation Limited and another Vs. Jai Raj Singh Chauhan***, (2011) 13 SCC 541: (2012)2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below:

“(19) In Union of India Vs. Parma Nanda (1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, this Court while dealing with the scope of the Tribunal’s jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:

“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 enquiry 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.”

(20) In *B.C. Chaturvedi Vs. Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgments and held:

“18. A review of the above legal position would establish that 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, cannot 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/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.”

(21) In *Apparel Export Promotion Council Vs. A.K. Chopra* (1999) 1 SCC 759: 1999 SCC (L&S) 405 the Court again referred to the earlier judgment and observed:

“(16). The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding

*authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on **no evidence** or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is **not** concerned with the **correctness** of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in **Chief Constable of the North Wales Police v. Evans** (1982) 1 WLR 1155:(1982) 3 All ER 141 (HL) observed:*

‘... The purpose of judicial review is to 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 authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.’

(17). Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.”

13. In the instant case we find that the disciplinary, appellate and revisionary authorities have assigned cogent reasons while passing the impugned orders. Thus, considering all pros and cons of the matter and the settled legal position we are of the considered view that the impugned orders passed by the respondents cannot be interfered with and the applicant are not entitled to get any relief sought for in this Original Application.

14. Accordingly, 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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