Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

ORGINAL APPLICATION NO.299 OF 2010

Jabalpur, this Wednesday, the 19th day of September, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Shiv Narayan Nema S/o Shri P.C.Nema, Aged about 53 years,
Ex. A.C.R.S. Bhopal, R/o Durga Nagar,
Vidisha (M.P.)-464001 **- APPLICANT**

(By Advocate – Shri S.K.Nandy)

Versus

1. West Central Railway through its
General Manager, West Central Railway,
Indira Market, Jabalpur-482001

2. Divisional Commercial Manager,
Commercial Department,
West Central Railway, Bhopal Division,
Bhopal (M.P.)-462001

3. Senior Divisional Commercial Manager,
Commercial Department of Bhopal Division,
West Central Railway,
Bhopal (M.P.)-462001

4. Assistant Divisional Railway Manager
of Bhopal Division,
West Central Railway,
Bhopal (M.P.)-462001

5. Chief Commercial Manager, Commercial Department,
General Manager Office, West Central Railway,
Indra Market, Jabalpur-482001 **- RESPONDENTS**

(By Advocate – Shri Ashok Kumar Mishra)

(Date of reserving the order:13.08.2018)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved by imposition of penalty of compulsory retirement imposed upon him after conducting a full-fledged departmental enquiry.

2. The brief facts of the case are that the applicant was working as Assistant Chief Reservation Supervisor in Reservation Central situated in Madhya Pradesh Vidhan Sabha Premises, Bhopal. While working on the said post he was subjected to a disciplinary proceeding and a major penalty charge-sheet dated 13.12.2006 (Annexure A-4) was issued to him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The charges levelled against him were that he had committed certain grave irregularities inasmuch as excess amount of Rs.3066/- was detected in private cash; detection of less amount of Rs.3026/- in government cash; detection of 06 reservation tickets without requisition forms; manipulation of tickets; and possession of RTC coupons during the vigilance check, which indicated that he was involved in malpractices tantamounting to grave misconduct. The applicant after receiving the charge sheet had denied charges in toto. Thereafter a full-fledged enquiry was conducted. The enquiry officer vide his report dated 13.07.2007 (Annexure A-5) held all the charges proved against the applicant. A copy of the enquiry report was duly sent to the applicant vide letter dated

17.08.2007 and the applicant submitted his reply on 03.10.2007. After considering all the materials, the disciplinary authority vide his order dated 08.09.2008 (Annexure A-1) imposed upon the applicant penalty of compulsory retirement with immediate effect. His appeal and revisions were rejected by the appellate and Revisionary authorities vide orders dated 17.07.2009 (Annexure A-2) and 23.12.2009 (Annexure A-3) respectively.

3. The applicant has mainly contended that in this case no presenting officer had been appointed by the disciplinary authority in the enquiry to present the case of the prosecution. The enquiry officer assumed the role of presenting officer as well, and acted as a Prosecutor and a Judge simultaneously. The entire examination-in-chief of the witnesses of prosecution was done by the enquiry officer. Thus, the principle of natural justice were grossly violated and the whole enquiry stands vitiated on this score alone. In this context he has relied on the decision of Hon'ble High Court of Madhya Pradesh in the matters of **Union of India & others** Vs. **Mohd Naseem Siddiqui,** (2004) ILR (MP) 821 : (2005) 1 LLJ 931.

3.1 The applicant has also contended that the appellate as well as the revisionary authorities have failed to give their own reasons while affirming the order of punishment and have passed non-speaking orders. In this context he has placed reliance on the decision of the Hon'ble

Supreme Court in the matters of ***Rani Lakshmi Bai Kshetriya Gramin Bank*** *Vs.* ***Jagdish Sharan Varshney, (2009) 4 SCC 240.***

3.2. The applicant has further contended that the entire story and the check was concocted and fabricated by the vigilance department. The enquiry officer has also relied upon the evidence of the CBI (vigilance personnel's) while proving the charges against the applicant. He has been subjected to a harsh punishment of compulsory retirement from service, although the applicant was having 28 years of service with the respondent.

3.3. The learned counsel for the applicant has contended that at every stage right from preparation of charge sheet to issuance of punishment order, appellate order and revisional order the vigilance organisation was required to be consulted and the authorities were required to act as per the dictate, whims and fancies of vigilance organization, which is totally uncalled for and the enquiry stands vitiated on this score alone.

4. On the other hand the respondents have submitted that the applicant has accepted the punishment and accordingly all the retiral benefits have been received by him and now he is getting pension.

4.1 The respondents have further stated that the enquiry officer has enquired the matter in length and the proceeding was with utmost satisfaction of the applicant too, because the applicant has never objected

this aspect during enquiry. The applicant was working as Assistant Chief Reservation Supervisor and was required to exercise higher standard of honesty and integrity.

4.2 The respondents have also stated that it is not feasible to appoint Presenting Officer in majority of enquiries. The enquiry officer has to examine/cross-examine the witnesses including the defence witnesses to find out the truth in the charges as per RBE No.89/2001 dated 09.05.2001 (copy placed on record along with their reply).

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. As regards the decision of Hon'ble High Court in the matters of **Mohd Naseem Siddiqui,** (supra), we find that in the said matter the Hon'ble High Court has held thus:

> *"**(16)**. We may summarise the principles thus:*
>
> *(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*
>
> *(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.*
>
> *(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the*

prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may".

6.1 We further find that recently in the matters of **Union of India** Vs. **Ram Lakhan Sharma,** 2018 (8) SCALE 387, the Hon'ble Supreme Court has dealt with above decision of Hon'ble MP High Court in the matter of **Mohd Naseem Siddiqui** (supra) and after quoting above findings of the Hon'ble High Court, has held thus:

*"**(33)**. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in facts situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the*

applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice.

6.2 On considering the facts of the instant case we find that the applicant has simply stated that since no presenting officer was appointed the punishment order should be quashed. However, he has not pointed out anywhere as to how he has been prejudiced by non-appointment of presenting officer. The applicant has nowhere pointed out that the enquiry officer himself led the examination in chief of the prosecution witness by putting questions. Thus, the reliance placed by the applicant on the decision of Hon'ble High Courts of Madhya Pradesh is misplaced.

7. Hon'ble Apex Court in the matters of **B.C.Chaturvedi** Vs. **Union of India,** (1995) 6 SCC 749 has held that:

*"**(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 co-extensive 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)

8. In the instant case, the applicant has failed to bring out any point which indicates that his case has been prejudiced.

9. In view of the legal position as pronounced in **B.C.Chaturvedi** (supra) case and considering the facts of the present case, we are of the view that no irregularity has been committed by the respondents which warrants our interference.

10. Regarding the quantum of punishment we may observe that 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."

11. Thus, it is settled law that jurisdiction of courts in this regard is rather limited. Its power to interfere with the disciplinary matters is circumscribed by well known factors. It can not set aside a well- reasoned order only on sympathy or sentiments. Once it is found that all the

procedural requirements have been complied with the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. If decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when misconduct stands proved.

12. It is the contention of the applicant that at every stage right from preparation of charge sheet to issuance of punishment order, appellate order and revisional order the vigilance organisation was required to be consulted and the authorities were required to act as per the dictate, whims and fancies of vigilance organization.

12.1 The Central Vigilance Commission gets its mandate from the Act of Parliament. The Vigilance Departments of Ministries/Departments draws its strength from it. It is the duty of Vigilance Department to conduct preventive checks to find corrupt practices. Further to such checks, the draft documents are prepared by Vigilance Department. But to accept such drafts/advice or not is the sole prerogative of the disciplinary authority.

12.2 In this case, the applicant has not been able to prove its case that it was only dictates of Vigilance Department and not independent application of mind by disciplinary/appellate/revisionary authorities.

13. We also find that the contention of the applicant that the appellate as well as the revisionary authorities have failed to give their own reasons while affirming the order of punishment and have passed non-speaking orders is also not sustainable and is rejected. In this regard, we may reproduce relevant paragraphs of the decision in the matters of ***Rani Lakshmi Bai Kshetriya Gramin Bank*** *Vs.* ***Jagdish Sharan Varshney (supra)*** relied upon by the applicant, as under:

> **"5.** In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in *Prabhu Dayal Grover case* (1995) 6 SCC 279 has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.
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> **6.** The view we are taking was also taken by this Court in *Divl. Forest Officer* v. *Madhusudhan Rao* (2008) 3 SCC 469 (vide SCC para 20 : JT para 19), and in *M.P. Industries Ltd.* v. *Union of India* AIR 1966 SC 671, *Siemens Engg. & Mfg. Co. of India Ltd.* v. *Union of India*(1976) 2 SCC 981 (vide SCC para 6 : AIR para 6), etc.
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> **7.** In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.
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> **8.** The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee* v. *Union of India* (1990) 4 SCC 594 is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some

reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9. No doubt, in *S.N. Mukherjee case* (1990) 4 SCC 594 it has been observed that: (SCC p. 613, para 36)

> "*36*. … The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one-line orders stating that they agree with the view of the lower authority.

10. For the same reason, the decision of this Court in *State of Madras* v. *A.R. Srinivasan* AIR 1966 SC 1827 (vide AIR para 15) has also to be understood as explained by us above.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order, but we cannot understand why the High Court has set aside the order of the disciplinary authority, in addition to setting aside the appellate order".

13.1 A perusal of the above decision of the Hon'ble Supreme Court it is very much clear that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but at least brief reasons need to be given in an order of affirmance. On perusal of the orders passed by the appellate as well as revisionary we find that both the authorities have given their sufficient reasoning while passing their orders and they cannot be said to be non-speaking orders as alleged by the applicant.

14. Thus, after considering all pros and cons of the matter, we are of the considered opinion that the applicant has totally failed to make out his case warranting our interference.

15. Accordingly, the Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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