Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: BILASPUR

Original Application No.203/00708/2016

Jabalpur, this Tuesday, the 17th day of July, 2018

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

Smt. M. Venkata Laxmi
Aged 35 years
Papa Rao Shiv Satya Bhawan,
Shankar Nagar, Bilaspur (CG.) **-Applicant**

(By Advocate **–Shri B. Narayan Rao**)

V e r s u s

1. Union of India,
Through the General Manager,
South East Central Railway,
Bilaspur 495004 (C.G.)

2. The Divisional Railway Manager
(Reviewing Authority)
SEC Railway,
Bilaspur 495004 (C.G.)

3. The Divisional Operations Manager
(Appellate Authority)
SEC Railway
Bilaspur 495004 (C.G.)

4. The Assistant Operations Manager,
Disciplinary Authority
SEC Railway
Bilaspur 495004 (C.G.) - **Respondents**
(By Advocate **–Shri R.N. Pusty**)
(Date of reserving the order:10.07.2018)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved by the fact that her husband was removed from service by the respondents for unauthorized absence. Hence, this Original Application.

2. The applicant has submitted that her husband was working as Porter at Kothari Road Station of South East Central Railway. He fell ill on 21.08.2010 and was admitted in Dr. Avinash Khare Hospital, Bilaspur for treatment, where he was treated for Typhoid and Jaundice till 20.10.2010. When he reported for duty, he was sent to Special Medical Examination on 26.11.2010. During the period of medical examination, his condition became serious. The relatives shifted him to K.G. Hospital Vishakhapatnam where Dr. Ch. Swami Naidu, Civil Surgeon diagnosed him as suffering from Tuberculosis and mental depression and treated him till 10.05.2011 and declared him fit for duty from 11.05.2011 (Annexure A-12) . He resumed duty on 07.09.2011. The respondent No.4 issued charge sheet on 18.07.2011 (Annexure A-2) treating the period from 21.08.2010 to 12.07.2011 and onwards as unauthorized absence from duty.

2.1 The applicant further states that an Enquiry Officer was nominated to enquire upon the charges levelled against her husband. She submits that her husband was not given time to

submit medical certificate by the Enquiry Officer. The enquiry report was submitted on 11.12.2011 (Annexure A-3).

2.2 The applicant further submits that the Railway employee was not given copy of the enquiry report and the Disciplinary Authority passed the order on 29.03.2012 (Annexure A-4) for removal of service. The Appellate Authority rejected the appeal on 17.09.2012 (Annexure A-6) without considering the real fact of sickness, mental depression with Tuberculosis of the charge sheeted employee that prevented him to join his duties.

2.3 It has been further stated in the application that on receipt of the order of the Appellate Authority, the applicant's husband committed suicide on 07.10.2012. She submits that her application for compassionate appointment and compassionate allowance to respondent No.2 is still pending.

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

> *"**8. Relief(s) sought***
> *In view of the aforesaid facts and grounds, the applicant respectfully prays from the Hon'ble Tribunal as under:-*
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> *"8.1 That the Hon'ble Tribunal be pleased to allow the Original Application and decide the applicant's grievance and uphold the challenge of D& A proceedings and set aside the orders of removal from service.*
>
> *8.2 That, the Hon'be Tribunal to pleased to pass order directing the respondents to consider the applicant's*

pending presentation dated 14.11.2012 (Annexure A-8) granting family pension and deciding offer of compassionate appointment to mitigate financial crisis at the earliest and within stipulated period as Hon'ble Tribunal deem fit and proper, in the interest of justice."

4. The respondents have filed their reply, in which they have stated that earlier also the applicant's husband has been removed and penalized in connection with remaining unauthorized absent from duty from 26.12.1999 to 29.12.1999, 01.01.2000, 04.01.2000 to 07.01.2000, 11.01.2000 to 25.02.2000, 27.02.2000 to 07.03.2000, 03.04.2000, 27.04.2000 to 30.06.2000 and 26.12.2001 to 25.12.2002. The removal order dated 25.05.2003 is at Annexure R-3.

4.1 The respondents stated that the Railway employee has preferred appeal on 29.06.2012 to Appellate Authority with different precarious concocted documents beyond limitation period approximately one and a half year.

4.2 The reply avers that the enquiry has been conducted and finalized as quickly as possible as per rules. During the course of regular sitting also when the Charged Official (CO) was asked as to whether, he had any documentary proof of his medical treatment, he retorted that in the final sitting he will show all the medicine slip and certificates (Answer to question No.3 & 4). In the final sitting, CO said that all the documents are missing. The CO has taken one

and a half years to produce different concocted precarious Private Medical certificates without putting any signatures on it, instead of going through existing medical system. More than one and a half years time will not be required to produce any authenticated proofs from 21.08.2010 to 29.06.2012 (date of appeal) before the administration.

4.3 Respondents have stated that the application dated 14.11.2012 (Annexure A-8) has already been replied to by the respondents on 01.03.2013 (Annexure A/10 and R/5).

4.4 In view of their submission, the respondents have prayed that this Original Application be dismissed.

5. Heard learned counsel of both the parties and perused the pleadings available on record.

6. Learned counsel for the applicant laid emphasis on the fact that the respondents have not considered the sick certificate signed by the attending physician, and has passed orders in a casual fashion.

7. Learned counsel for the respondents argued that the deceased Railway employee was habitual unauthorized absentee, and was removed from service on an earlier occasion on 25.05.2003 also. He did not follow any rules regarding availing treatment from Railway Hospital, and leaving place of work

without permission. He disappeared while being sent for Special Medical Examination.

7.1 Learned counsel for the respondents also argued that during enquiry, the CO mentioned about going to search his missing father-in-law, meeting with an accident in which he injured his left leg and thereafter was busy in treating his wife. But no documents have been produced by the CO to support his claim. He also submitted that certificate filed as Annexure A-12 is without date and is only a fit certificate.

8. In the instant case, it is undisputed fact that the deceased employee was absent from his duty for more than one year without following any rules. No documents in support of his sickness were produced before the Enquiry Officer or Disciplinary Authority. His reason for absence in the enquiry has also been stated to be different than self sickness. It is also seen from the averments of the applicant that the deceased employee resumed duty on 07.09.2011 after being declared fit on 11.05.2011. The whereabouts for this gap of almost four months have not been explained.

9. It is clear that Tribunals/Courts can interfere in Disciplinary proceedings in a very limited manner only in those cases where the

employee has not been granted natural justice and /or his rights have been prejudiced.

10. 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:
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> > "*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."
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> **(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:
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> > "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:
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> > '… 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.'
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> 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."

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 {See:**Martuti Udyog Ltd.** Vs. **Ram Lal**, (2005) 2 SCC 638; **State of Bihar** Vs. **Amrendra Kumar Mishra**,(2006) 12 SCC 561; **SBI** Vs. **Mahatma Mishra**, (2006) 13 SCC 727; **State of Karnataka** Vs. **Ameerbi**, (2007) 11 SCC 681; **State of MP** Vs. **Sanjay Kumar Pathak,** (2008) 1 SCC 456; and **Uttar Haryana Bijli Vitran Nigam Ltd.** Vs. **Surji Devi,** (2008) 2 SCC 310}.

11. In view of the above settled legal position, we do not find any fault with the action taken by the respondents.

12. Accordingly, the Original Application is dismissed being devoid of merits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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