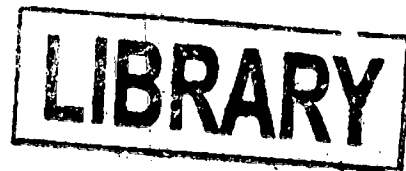


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 701 of 2011

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jayati Chandra, Administrative Member

APARNA BHATTACHARYA & ANR.

VS

UNION OF INDIA & ORS. (E.RLY.)

For the applicants : Mr.A.K.Banerjee, counsel
Mr.P.Sanyal, counsel

For the respondents : Mr.P.B.Mukherjee, counsel

Heard on : 1.2.2016

Order on : 11.3.16.

O R D E R

Ms. Bidisha Banerjee, J.M.

The original applicant namely Arun Kanti Bhattacharya on his demise has been substituted by his widow Aparna Bhattacharya and son Ashim Bhattacharya who have stepped into his shoes to challenge the proceedings.

2. The entire Disciplinary Proceedings that emanated from a charge memo dated 13.9.01 and culminated into a penalty of reversion of a lower grade cumulative till retirement along with the order passed by the Appellate Authority upholding such appointment are under challenge in the present OA.

The indictments against the applicant are as under :

"During the period of Jan'2000 to Mar'2000 Sri A.K.Bhattacharyya, the then Sr. SE (P.Way) NH at present working in the section of SE(NH) charged 1496.90 mtr. 90R (Scrap) rails in different location in his section vide M.A. Vouchers 595557 to 595571 without releasing any rail against the charging. The charging through MA voucher was done in his own handwriting. He has agreed in his clarification that to minimise the shortage some rails were charged in false ground. AEN/KPA also stated that the charging of rails were on false ground.

From the above false charging he made a loss to the Rly. To a tune of Rs.520853/- approx.

1496.90 mtr.	x 44.61 kg. Per mtr.	= 667776.70 Kg
i.e. 66.776 MT	@ 7800 per MT	=520853/-

It is therefore, clear that Sri A.K.Bhattacharya, the then Sr. SE (P.Way) NH at present working in the section of SE(NH) failed to maintain

the store of Section Engineer (P.Way) NH properly and irregularly deducted a large quantity 90R 9Scrap) rail from his stock.”

3. The legal lacunae in the conduct of the proceedings as highlighted by the applicant in the pleadings would be as under :

- (i) The charge sheet was issued after acceptance of voluntary retirement that the applicant tendered vide his appeal dated 15.12.99 w.e.f. 31.3.2000 as contained in Annexure A/9. Therefore the issuance of the charge memo without the sanction of the President was a nullity in the eye of law being void ab initio.
- (ii) The sole prosecution witness namely Shri A.N.Sinha, Chief Vigilance Inspector, CBI, ER/CCC was not examined vitiating the entire proceedings in view of the decision rendered in Roop Singh Negi (Civil Appeal No. 7431/08)
- (iii) The authors of the documents were not cited as witness or examined during the course of enquiry which further vitiated the proceedings.
- (iv) The documents were not verified by the makers of such documents.
- (v) The Enquiry Officer failed to consider the reply to the charge memo, his findings were perverse.
- (vi) The punishment of reduction as well as recovery amounted to double jeopardy and therefore the punishment order deserves to be quashed.
- (vii) The Appellate order was mechanical, cryptic and non-speaking.

4. Per contra the respondents would submit the following that :

- (i) The voluntary retirement tendered by the applicant on 15.12.99 was not eventually implemented. The applicant continued his service and retired on superannuation as on 31.1.04. Therefore as on the date of issuance of charge memo no sanction from the President was required.
- (ii) The applicant was charge sheeted for false charging of 90R Rail (scrap) 1496.6 Meter (66.7776 MT) Rail and made a loss to the Railway Rs.520853/- in different locations.
- (iii) The applicant during period Jan'2000 to March'2000 charged 1496.60 Meter (Scrap) rail in different locations in his jurisdiction vide MA

voucher No. 59557 to 595571 without releasing scrap rail against the charging. Since his reply dated 1.10.01 was not satisfactory punishment was imposed on 31.12.03 during his tenure of Railway service.

- (iv) The Enquiry Officer conducted the process of enquiry and submitted his Enquiry Report.
- (v) The copy of the Enquiry Report was furnished to the applicant for his reply and being not satisfied with the reply, punishment order was issued on 31.12.03 reverting the applicant from Rs.7450-11599 and pay Rs.11,275/- to Rs.6500-10500/- on pay Rs.6500/- (cumulative) till retirement and Rs.520853/- had to be recovered from his settlement dues.

5. In the rejoinder the applicant submitted that the deceased employee due to heavy work load and tension suffered a cerebral stroke on 5.11.98 which left him paralyzed on the left side. He was not in a position to resume his duties at Naihati from his residence at Kalyani. One Samir Kr. Chakraborty, PWI (Mills) acted as PWI in place of the deceased employee but he was not touched. The applicant was made a scapegoat while the said PWI was allowed to go scot free.

6. He further alleged that during the enquiry no prosecution witness was produced to sustain the alleged charges or to unearth the truth. The enquiry was performed in a half-hearted manner. The findings were based on surmises and conjectures not in conformity with the provisions as contained in RS (D&A) Rules, 1968 and the entire proceedings suffered from perversities.

7. We have heard the Id. Counsels for the parties and perused the materials on record.

8. In the case at hand the following factual matrix would be noted :

- (i) On 1.10.01 the applicant wrote to the Sr. Divisional Engineer, Eastern Railway, Sealdah through AEN II, Kanchrapara that due to cerebral attack he was fully bed-ridden during 19.2.2000 to 6.9.2000 during which a theft case of 21 pieces 90 R 13 m scrap rails occurred near L. C. Gate, it which was identified by Trolleyman of SE (PW) NH and verbally reported to Store Clerk but no action was taken to report the

theft case whereas to minimise the shortage of 21 pieces 13 m 90R rails and 11 pieces 13m 90R rails received back by Store Clerk in excess from PWI/DP at PQRS base/ NH yard were charged against the vouchers during his sick period to which he had no say.

He even stated as follows :

"Sir, I will not appoint any Defence Helper on my behalf in this case.

You are my sole and competent authority to finalise the case and that's why I like to appeal before you to please deal the case sympathetically and for my ignorance in charging rails I am ready to accept any sort of adverse action from your end please.

In this connection I also like to let you know that I had no ill motive but only to save my successor from any shortage of rails in future.

Sir, whatever the actual case I expressed before you the full fact for your kind information and consideration please.

Please also treat this as a mercy appeal from my end."

(ii) On the basis of such admission the Enquiry Officer recorded that prosecution exhibits substantiated the charges and the exhibits stood "uncontested by the delinquent". During his acute illness he had to sign many papers brought to him by Store Clerk and "unintentional mistakes might have cropped up". Therefore the Enquiry Officer found him partly guilty.

(iii) The Disciplinary Authority however, disagreed with the findings and gave its note on 30.11.03 inviting representation on the same.

(iv) A punishment of reversion to a lower grade along with recovery of Rs.520853/- "from settlement dues" was imposed vide order dated 31.12.03 solely on the basis of the admission. The Disciplinary Authority in his order, observed as follows :

"The CO in his defence statement against charged memorandum has stated that he is ready to accept any sort of adverse action from the Disc. Authority. During enquiry proceedings, the CO's submission was that during his acute illness, he had to sign many a papers (official) brought to him by Store Clerks for signature and unintentional mistakes might cropped up. The submission of CO is unjustified & unacceptable. The materials was charged on false ground causing loss to the Rly. Administration of Rs.520853/-. I think that the CO is fully responsible for the charge levelled against him which he accepted."

The Rule 6 of RS (D&A) Rules enumerate the following penalties :

"Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

Minor Penalties -

- (i) Censure;
- (ii) Withholding of his promotion for a specified period;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;
- (iii-b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (iv) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay;

Major Penalties -

- (v) Save as provided for in clause (iii-b) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;
- (ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration:

Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collision of Railway trains, one of the penalties specified in clauses (viii) and (ix) shall, ordinarily, be imposed and in cases of passing Railway signals at danger, one of the penalties specified in clauses (v) to (ix) shall, ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing:

Provided further that in case of persons found guilty of possessing assets disproportionate to known sources of income or found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or or bearing to do any official act, one of the penalties specified in clauses (viii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing."

In **State Bank of India -vs- T.J.Paul** [(1994) 4 SCC 759] Hon'ble

Apex Court held as under : (emphasis supplied)

*"Learned Senior Counsel for the appellants, Shri T.R.Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of 'removal', which was lesser in severity. Learned Senior Counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court in **Union of India v. G. Gananyutham**. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the rules of Bank of Cochin and the Court is merely insisting that the*

authority is confined to the limits of its discretion as restricted by the rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishments for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishment for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of "removal" that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are "warning or censure or adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service". The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in para 22(v) other than dismissal without notice."

Law is therefore well settled that the penalty to be inflicted should be one of the enumerated penalties as per the service rules. The "recovery from settlement dues", which was not an enumerated penalty, could not be legally inflicted. It was a nullity in the eye of law.

(v) In his appeal preferred to ADRM on 10.1.04 the applicant indicated that the shortage of rails amounted to Rs.1,44,736.80 whereas he was charged with having caused a loss of Rs.5,20,853 i.e. a net difference of Rs.3,76,116.00/- which along with reversion was too harsh. Therefore he prayed for a sympathetic consideration considering his ill health. The Appellate authority on 1.4.04 simply passed the following order :

"On going through the case & enquiry report, I uphold the punishment of reversion to lower grade and recovery."

The appellate authority therefore did not apply his mind on the materials, defence put forth, the factual discrepancies as pointed out by the applicant in his appeal and the correctness or proportionality of the penalty. Therefore, he violated the provisions of Rule 22 of RS (D&A) Rules which require the Appellate Authority to delve into the following :

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

The authority miserably failed to discharge its duties to find whether the penalty was adequate and legally imposed.

(vi) On 24.11.10 this Tribunal, in OA 337/05 challenging the penalty order, disposed it of without going into the merits, with liberty to the applicant to file appropriate application. Therefore there was no bar in entering into the merits of the proceedings.

(vii) On 2.3.11 the applicant sought for exemption while ventilating his grievance in regard to non-payment of monthly pension, denial of medical facilities and complementary retirement passes and non-payment of salary for January 2004, non payment of actual and entire amount of Provident Fund accumulation.

9. Ld. Counsel for the applicant during the course of hearing would submit that even after issuance of penalty order the respondents issued a fresh charge sheet with the same allegations however, he could not substantiate the same by way of records.

10. Ld. Counsel for the respondents would submit that in view of the clear admission on the part of the applicant the proceedings could not be challenged on the ground of technical defects or cryptic order, however, we are of a different opinion. In **Roop Singh Negi -vs- Punjab National Bank & Ors. Hon'ble Apex (Civil Appeal No. 7431 of 2008)** Hon'ble Apex Court held as under :

"10.We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

Therefore even after confession, the guilt of the applicant had to be established from the evidence.

11. The scope of judicial review in Disciplinary Proceedings or jurisdiction of the Court on judicial review in the matter of enquiry proceedings is very limited (*M.V.Bijlani -vs- UOI & Ors. [2006 (5) SCC 88]*).

12. In *Registrar General, High Court of Patna -vs- Pandey Gajendra Prasad & Ors. [2012 (6) SCC 357]* it has been eloquently held that the scope of Judicial Review under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. The Hon'ble Apex Court has enumerated the following situations where the interference with the departmental authorities is permitted :

- (i) if such authority has held the proceedings in violation of principles of natural justice; or
- (ii) in violation of statutory regulations prescribing the mode of such enquiry; or
- (iii) if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case; or
- (iv) if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion;

13. The defects in the penalty order and the appellate order, as issued in violation of Statutory Rules, is already exposed.

14. The respondents have admitted that the applicant has been paid a provisional pension w.e.f. February 2004 @ Rs.5296/- without the Dearness Relief and PF amount of Rs.2,47,824/- and GIS and Rs.6990/- and that they have held up the payments against computation of pension, gratuity leave salary without indicating the total amount due and the balance amount to be paid to the applicant as settlement dues of her late husband.

15. In view of our factual revelations and settled law supra, although we find no infirmity with the conduct of proceedings, the penalty order and the consequent order would deserve to be quashed in view of the enumeration

(supra). They are therefore quashed. The matter is remanded back to the Disciplinary Authority to pass appropriate order in accordance with law, on the findings of the Inquiring Authority, within three months.

16. Since the payable gratuity can be withheld pending proceedings, the recovered amount be refunded back to the employee within one month, retaining only the gratuity amount, which shall be released subject to the outcome of the proceedings.

17. The applicant shall draw provisional pension as per law, till judicious conclusion and culmination of the disciplinary proceedings.

18. The treatment of the applicant post such conclusion would rest solely upon such conclusion and would abide by the same.

19. While issuing their orders the respondents would act strictly in terms of the RS (D&A) Rules and RS (Pension) Rules.

20. The present OA is accordingly disposed of. No order is passed as to costs.

(JAYATI CHANDRA)
MEMBER (A)

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(BIDISHA BANERJEE)
MEMBER (J)

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