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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

Original Application No. 1082 of 2012

In the matter of :

SRI JAYANTA MUNSHI, son of late
Jogesh Chandra Munshi, aged about 48
years, Residing at Railway Quarter No. S-
3/1, Unit-6, New Development
Kharagpur, District Paschim Medinipur,
working as a Hd. TTE, Kharagpur under
✓ Sr. DCM, Kharagpur, Kharagpur Division,
South Eastern Railway.

... APPLICATION ...

Versus

1. **UNION OF INDIA**, through the
General Manager, South Eastern Railway,
Garden Reach, Kolkata-700 043.
2. **THE CHIEF PERSONNEL OFFICER**,
South Eastern Railway, 14, Strand Road,
Kolkata-700 001.
3. **THE CHIEF COMMERCIAL
MANAGER**, South Eastern Railway, 14,
Strand Road, Kolkata-700 001.

4. **THE DIVISIONAL COMMERCIAL MANAGER**, Kharagpur, South Eastern Railway, P.O. Kharagpur, District Paschim Medinipur.

5. **THE SENIOR DIVISIONAL PERSONNEL OFFICER**, South Eastern Railway, Kharagpur, District Paschim Medinipur.

6. **THE SENIOR DIVISIONAL COMMERCIAL MANAGER**, Kharagpur, South Eastern Railway, P.O. Kharagpur, District Paschim Medinipur.

7. **CHIEF TICKET INSPECTOR (I-C)**, District-IV, Kharagpur, South Eastern Railway, District Purba Medinipur.

... **RESPONDENTS**

No. O.A. 350/01082/2012

Date of order: 07/09/2017

Present: Hon'ble Mr. S.K. Pattnaik, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. S.K. Dutta, Counsel
Mr. B. Chatterjee, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Heard Ld. Counsel for the applicant and the respondents and examined the documents submitted by both sides.

2. The applicant has pressed for direction to quash and set aside impugned speaking order dated 5.11.2012 as well as order dated 10.9.2010 on the subject matter of imposition of major penalty against the petitioner. The petitioner also seeks for setting aside the impugned charge-sheet dated 14.11.2007, impugned inquiry report dated 13.10.2008, order of punishment dated 10.12.2008 and entire proceedings and order dated 5.11.2012 associated with the same and for release of consequential benefits.

3. The case of the applicant as argued by the Ld. Counsel is as follows:-

That, while the applicant was serving in the post of Head TTE, Kharagpur, a minor penalty chargesheet was issued against him by the Senior Divisional Commercial Manager, Kharagpur vide memo dated 26.11.2004. After completion of the proceedings the applicant was issued an order of punishment vide memo dated 28.1.2005 and admittedly the applicant duly suffered the said punishment.

That surprisingly, thereafter a chargesheet relating to major penalty was issued against the applicant vide memo dated 14.11.2007 and that the

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charges framed therein related to the identical cause of action in respect of which the applicant had already been punished by the order dated 28.1.2005.

4. That an order of punishment was issued to the applicant on 10.12.2008 against which he had preferred an appeal on 22.1.2009.

5. That despite two reminders to the appellate authority dated 11.9.2009 and 10.3.2010, the appellate authority did not choose to act on the same. Being aggrieved the applicant filed O.A. No. 1702 of 2010.

6. That in response to the directions of the Central Administrative Tribunal, Calcutta Bench dated 30.7.2010, the appellate authority passed a cryptic and non-speaking order. Being aggrieved the appellant filed O.A. No. 2079/2010 which was disposed of on 27.7.2012 directing the appellate authority to re-consider the appeal and to pass a speaking order within three months from the date of receipt of the order.

7. That the respondent authorities have issued an order dated 5.11.2012 upholding the original punishment without considering all the issues raised in the appeal petition by the petitioner/appellant. Hence, the O.A.

8. The Ld. Counsel for the respondents submitted as follows:-

That the applicant while working as Head Ticket Examiner of Kharagpur was involved in a serious charge for handing over his EFT Book to another TTI/Kharagpur to issue EFT on his behalf which is not permitted as per Railway Rules. The Vigilance Department of S.E. Railway at Garden Reach picked up the case and on the report of the Vigilance Department the appellant was issued with a major penalty charge-sheet dated 14.11.2007 on three charges. The three charges against the petitioner were as follows:-

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ANNEXURE-I

**Statement of articles of charge framed against Sri J. Munshi, Hd.
TTE/KGP working under Sr. DCM/Kharagpur**

Shri J. Munshi while working as Hd. TTE/KGP under Sr. DCM/KGP during the period February 2004 to August, 2004 dealing with issuing of EFTs to the passengers during journey is alleged to have committed grave misconduct in as much as follows:-

Article-I

Sri J. Munshi, being a Hd. TTE/KGP under Sr. DCM/KGP had handed over EFT book issued to him containing Folio No. 638999 to Sri S.K. Das, TTE/KGP on 28.3.2004, 30.3.2004 and 1.4.04 without any authorization and insisting Sri Das to issue EFT's in the name of himself for regularization of his duty on the above dates. Thus he had mishandled the money value book by indulging malpractice of handing over the EFT to other person which is a grave misconduct.

Article-II

Sri J. Munshi, being a Hd. TTE/KGP under Sr. DCM/KGP during the period from Feb 04 to August 04 did not perform any duties on 28.3.04, 30.3.04 and 1.4.04 but claiming false TA. Thus he had defrauded the Railway Administration by claiming false TA.

Article-III

Sri J. Munshi, being a Hd. TTE/KGP under Sr. DCM/KGP during the period February 2004 to August 2004 failed to obtain signature from the charged passenger in 27 (twenty seven) EFT foils, which should have been done in order to establish realization of correct amount from the bonafide passenger.

Sri J. Munshi, being a Hd. TTE/KGP under Sr. DCM/KGP during the period Feb-04 to August-04 failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway Servant in contravening of Rule 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966 rendering himself liable for disciplinary action being taken against him in terms of Railway Servants (D&A) Rules, 1968 as amended from time to time.

**Divl. Commercial Manager
S.E. Railway, Kharagpur"**

9. That the applicant was provided with an opportunity of submitting his reply to the charge-sheet but the disciplinary authority, not being satisfied with the reply of the applicant, nominated an inquiry officer to

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inquire into the charges leveled against him. On conclusion of the inquiry, the IO submitted the inquiry report stating that the applicant was guilty of all the three charges. The applicant also submitted his final defence representation to the inquiry report and that the disciplinary authority having gone through the report, relevant files including final defence representation issued a punishment order on major penalty by reducing two lower stage of pay of Rs. 5600/- from his pay of Rs. 5750/- in his existing time scale for a period of 7 years with cumulative effect.

10. That, in compliance with the direction of the Hon'ble Tribunal the appellate authority disposed of the appeal on 10.9.2010 and passed a further speaking order on 5.11.2012 upholding the punishment.

11. The main contention of the applicant is that the Article I and III of the major penalty chargesheet are almost identical to that of the chargesheet for minor penalty and, as such, the second proceeding on the basis of the said two articles of charge vitiates the entire charge-sheet. The applicant's further contention is Article II being based on the allegations of Article I are identical to the allegations leveled against the applicant in the minor penalty chargesheet which have been impliedly accepted by the applicant, who did not prefer any appeal against the punishment meted out on the proceedings on minor penalty against him.

12. Articles of charge as contained in the major penalty proceedings under Article I and III are not refutable at this stage by the applicant, who had admitted the charges while accepting the punishment on minor penalty. Article II, however, contains a charge which is distinct by itself and cannot be refuted logically. Admittedly, the applicant did not perform any duty due to physical injury during the impugned period as he failed to perform his duties apart from merely signing the attendance sheet; hence the question

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of his travelling outstation to perform any duty does not arise.

13. Hence, claiming TA for duties not performed is a distinct charge and stands substantiated in the inquiry proceedings.

14. In this matter, reliance is placed on the principle that:

"A distinction has to be drawn between a second enquiry on the same charges and a fresh enquiry on a new charge of the same character but based on different facts." as held in 1997 (1) SLR 467 (Mad) M. Kolandai Gounder v. Divisional Engineer, T.N.E.B. Thuraiyur.

In the instant matter, a fresh enquiry was initiated on distinct ^{charges} and it is not the ^{applicant's} case that the proceedings were vitiated on account of violation of statutory regulations prescribing the mode of such enquiry.

As held in High Court of Judicature at Bombay v. Shashikant S. Patil, (2000) 1 SCC 416, judicial review of disciplinary proceeding are attracted on the following grounds:-

- (a) Where there has been a violation of the principles of natural justice; or
- (b) The proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry; or
- (c) The decision is vitiated by considerations extraneous to the evidence and merits of the case; or
- (d) If the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion; or
- (e) Other very similar to the above grounds."

None of these grounds having been established in the instant matter, we are of the view that there is little scope of judicial review.

15. With the aforesaid observations, the O.A. is disposed of accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(S.K. Pattnaik)
Judicial Member