

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00420/2016

Date of order: 4th June, 2018

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Tapan Kumar Maitra,
Son of Late Bhupendra Nath Maitra,
Residing at, Rabindrapally,
P.O. : Rabindranagar,
Kolkata – 700064.

... Applicants

- V E R S U S -

1. Union of India,
Services through General Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700001.
2. The Senior Transportation Manager(Goods),
Eastern Railway,
COM Office,
17, N.S. Road,
Kolkata – 700001.
3. Chief Operational Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700001.
4. The Deputy Chief Operational Manager(Goods),
Eastern Railway,
17, N.S. Road,
Kolkata – 700001.
5. The Chief Personal Transportation Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700001.
6. Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Kolkata – 700001.

.. Respondents

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For the Applicants : Ms. B. Ghoshal, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel
Mr. A.K. Banerjee, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

This matter has come up after a series of litigations. The present application has been filed against the order of appellate authority dated 4.12.2015 which was issued in compliance to orders of the Tribunal dated 28.8.2015 in O.A. No. 40 of 2013. The applicant has prayed for the following specific relief:-

- "a) To direct the concerned respondents, more particularly the respondent no. to cancel, rescind and/ or withdraw the speaking order dated 4th December, 2015, issued to the applicant, forthwith;
- b) To direct the concerned respondents to transmit and authenticate and produce all the records in connection with the aforesaid matter before this Hon'ble Tribunal, so that conscionable justice may be done to the applicant upon hearing the parties;
- c) To direct the respondents concerned to allow your applicant to draw his entire retiral benefits considering him as in service in his respective post with effect from the date of his suspension till the date of the actual payment, on withdrawal of the order of dismissal dated 04.12.15;
- d) And to pass such other or further order or orders and/ or direction or directions as to this Hon'ble Tribunal may deem fit and proper.."

2. Heard both Ld. Counsel and examined pleadings on record.

3. The applicant's case, in brief, is as follows:-

That, he had joined the respondents' service and, while functioning as a Sr. Clerk under COM/Goods/Office/ER, was suspended on the grounds of practising fraud.

That, he was issued with a charge memo on 11.12.2003.

That, enquiry started on 19.3.2004. The enquiry report was submitted on 9.7.2004 and the disciplinary authority passed an order of removal from service on 7.9.2004.

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That, the applicant preferred an appeal for re-instatement but the appellate authority vide his order dated 10.3.2005 had upheld the order of the disciplinary authority.

That, several Original Applications have been filed and the last of which being No. 40 of 2013, was finally disposed by the Tribunal with directions on the appellate authority to pass a fresh order in accordance with Rule 22 of RS (D&A) Rules, 1968. While passing a fresh order, the appellate authority reiterated the same order of rejection upholding the order of dismissal.

That, the applicant superannuated from his service on 31.1.2013; he filed the instant application on 10.3.2016 in which the order of the appellate authority dated 4.12.2015 has been challenged.

4. Per contra, the respondents have argued that the applicant, who worked under COM/Goods/Office/ER had obtained a term loan of Rs. 48,750/- (Forty Eight thousand Seven Hundred Fifty) which he managed to get sanctioned on 20.12.2001 from the Bank of Baroda, Ballygunge Branch on submission of an undertaking under false signature of a designated Railway Officer to the effect that in case of default, inter alia, recovery would be made from terminal benefits of the employee.

That, the applicant having failed to repay the loan, the Branch Manager, Bank of Baroda, Ballygunge Branch brought the fact to the notice of the authorities when this falsification of signature etc. came to the knowledge of the Railway.

That, the applicant was suspended w.e.f. 24.9.2003 and thereafter he was served with a charge sheet dated 11.12.2003 proposing enquiry into the said charges.

That, the enquiry officer conducted an enquiry in terms of the relevant provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The enquiry officer found the charged officer/applicant guilty of offence charged against him and submitted the enquiry report accordingly.

A handwritten signature in black ink, appearing to read 'Lalaji'.

That, the inquiry officer did not permit the defence office assistants to participate in the enquiry proceedings as because the applicant / charged official was not present during the said proceedings.

That, on the basis of the said enquiry report, the authorities imposed a punishment of removal from service upon the delinquent officer.

That, against the said order of punishment, the applicant/charged official had preferred an appeal before the appellate authority but the appellate authority upheld the order of punishment imposed upon the applicant. The applicant/charged official thereafter filed an O.A. No. 40 of 2013 against the said appellate order which was disposed on 28.8.2015 under which the appellate order was set aside on the grounds that the same was not in conformity with Rule 22 of the RS (D & A) Rules, 1968. The appellate authority, after considering the provisions of Rule 22 of the RS (D & A) Rules, 1968 and in compliance of the orders passed by this Tribunal dated 28.8.2015, passed an order on 4.12.2015 which has been challenged in the instant O.A.

ISSUE

5. The sole issue that has to be resolved in the context of the instant application is whether judicial review is invoked.

FINDINGS

6.(i) The Hon'ble Apex Court, in reiteration of decisions in **State of Andhra Pradesh v. S. Sree Rama Rao**, AIR 1963 SC 1723 and **B.C. Chaturvedi v. Union of India & ors.** (1995) 6 SCC 749, has laid down the grounds of judicial review in the High Court of Judicature at Bombay v. **Shashikant S. Patil**, (2000) 1 SCC 416, which, in an enumerated form, would be as follows:-

- "(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

408

(e) other very similar to the above grounds."

In the instant application, principles of natural justice have never been violated; rather, the applicant/charged official had been given six opportunities by the enquiry officer to attend the proceedings none of which was availed of by the applicant. Again, while disposing of the appeal in compliance of the Tribunal's order dated 28.8.2015, the appellate authority had, as a special dispensation provided an opportunity to the applicant/charged official to further substantiate his case as mentioned in his appeal. The applicant/charged official had spurned the offer stating that, as no personal appearance has been directed in the orders of the Tribunal, he was not bound to attend. The appellate authority, however, had exercised his sense of fairness when he observed that given the fact that the matter was being heard after a lapse of 11 years since the earlier disposal of appeal dated 10.3.2005 the applicant/charged officer deserved a hearing. Hence, such repeated endeavours by the respondents to accord an opportunity to the applicant/charged official to be heard establishes that the respondents under no circumstances, had violated the principles of natural justice and if the applicant/charged officer failed to take advantage of the same, it was at his peril.

Coming to the question as to whether the proceedings have been held in violation of statutory regulations prescribing the mode of such enquiry, it is not the applicant's/charged official's case in the instant application that statutory regulations have been violated in the process of enquiry or in the process of passing of final orders by the disciplinary authority.

The applicant/charged official has, however, alleged that despite the orders of Tribunal in O.A. No. 40 of 2013, the appellate authority has not considered the case of the applicant in the light of Rule 22 of the RS (D & A) Rules, 1968. Rule 22 of the RS (D & A) Rules, 1968 is reproduced below for better understanding:-

"(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and

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having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider –

- (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:

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Rule 22(2)(b) is further highlighted in this context:-

"(b) Whether the findings of the disciplinary authority are warranted by the evidence on the record."

This brings us to the evidence adduced and the observations of the enquiry officer in the exparte enquiry proceedings. The extracted contents of the observations in the enquiry report observations are reproduced below:-

(d)	From the general prudence it appears similar signature of Sri Maitra in his application of dated 21.6.2004 with that of the undertaking submitted to the Bank of Baroda (accordingly at Page 246/C and 136/C)	
	XXXXX	
(g)	Sri Maitra never attended on the date of preliminary hearing and relentlessly prayed for adjournment or to start the proceeding with his representative against the Railway Enquiry Norms.	
	XXXXX	
6.	FINDINGS	Regular non-appearance of said Sri Tapan Kr. Maitra, the Charged Official on baseless and unreasonable ground despite the best opportunities were made available to him from this end to defend the article of charges appears that – <ul style="list-style-type: none"> (i) ill intention to prolong the proceedings; (ii) indirect acceptance of charges brought against him since he does not posses any documents to produce before the Enquiry Proceedings in support of his defence. However, sufficient documental evidences are left with to substantiate the article of charges for taking decision as "EXPERTE" Even, if the denial of Shi Maitra's at the Bank, Term Loan is taken as true for the

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		time being, yet the detailed service particulars in the undertaking, complaint of the Bank Manager to the Railway Authority, the similarity in hand-writing of Sri Maitra's letter, correspondences with that of undertaking in support of which the Term Loan got sanctioned, leaving of Headquarters to Chennai without official permission, expression of doubt about the integrity of Enquiry Officer without any prior meeting and above all, his repeated non-appearance before the Enquiry Proceedings to defend the charges brought against him considering the likely adverse punishment of SF-5 only proves the veracity of all the relied upon documents. So, his simple denial at the Term Loan does not stand good enough for any exoneration.
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Hence, there is no definitive finding on the forgery. The enquiry officer has observed that "it appears" which is at best a presumptive statement. If the signatures recorded in applicant for bank loan and that dated 21.6.2004 to the respondent authorities "appeared" similar, surely the respondents could have referred the matter to a handwriting expert/graphologist.

The findings of the Inquiry Officer, based on such observations, are even more convoluted.

Firstly, the non-participation of the applicant/charged official is interpreted as admission of guilt.

Secondly, the Inquiry Officer goes on to make a hypothetical statement, "Even if the denial of Shri Mitra at the bank term loan is taken as true for the time being."

Thirdly, the Inquiry Officer has relied on the following as indirect evidence/circumstantial evidence:-

- (a) Service particulars noted in undertaking to the bank;
- (b) Complaint made by bank to Railway authority;
- (c) Similarity of handwriting;
- (d) Unauthorized departure from Headquarter;
- (e) Allegation against IO;

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(f) Repeated non-appearance before the Inquiry Officer.

None of the above, however, establishes unequivocally that the charged official/applicant had forged the signature of the respondent authority and that the bank loan was obtained fraudulently which forms the basis of the two charges against the applicant/ charged official.

(ii) We are hence of the view that the said enquiry report was not based on any objective findings or evidence as the observations and findings are based on surmise, conjectures and presumptions. It is also not understood as to why, having alleged that the applicant/charged official was guilty of forgery, no criminal case had ever been instituted against him by the respondents.

Nowhere also the respondents have been able to prove that the certificate in question as submitted to the bank authorities have been forged by the applicant /charged official as the said allegation has not been established/confirmed by a graphologist/ hand-writing expert.

The disciplinary authority had concluded on the basis of the enquiry report and the disciplinary authority had also not sifted the evidence.

The applicant/charged official, while filing his appeal dated 16.10.2004 (Annexure A-3 to the O.A.), had in the penultimate paragraph, stated as follows:-

" The Disciplinary Authority in his order dated 9.7.04 did not at all site any reason as to on what basis and on the strength of which documents the Disciplinary Authority has upheld the findings or the Enquiry Officer holding the undersigned guilty on submitting an undertaking to the Bank by forging the signature of a Railway official. The fact remains that the Enquiry Officer in his enquiry report observed that from general prudence it appears that there is a similarity in the signature of the undersigned in his application dated 21.6.04 with that of the undertaking dated 20.12.01. But this observation of the Enquiry Officer is baseless and misconceived as because it becomes very clear on comparing the signatures as reflected in the letter dated 21.6.04 and undertaking dated 20.12.01 that both the two signatures are totally different."

The appellate authority, while passing the reasoned order, ought to have applied his mind to the adequacy and objectivity of the evidence based on which the enquiry officer had filed his report and the disciplinary authority had

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concluded. Such sifting of evidence is also missing in the orders of the appellate authority.

The Hon'ble Apex Court, while advising limited judicial interference with award of punishment, had observed in **Narinder Mohan Arya v. United India Insurance Co. Ltd. (2006) 4 SCC 713**, that in cases where the validity of disciplinary proceeding is challenged, the Court should keep in mind that suspicion or presumption cannot take place of proof even in a domestic enquiry.

A Three Judge Bench of the Hon'ble Apex Court, in **Indian Oil Corporation Ltd. V. Ashok Kumar Arora, (1997) 3 SCC 72**, had pointed out as follows:

" At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries, and the findings recorded therein does not exercise the powers of appellate court/Authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence, and or the punishment is totally disproportionate to the proved misconduct of an employee."

Hence, in our considered view, therefore, the appellate authority ought to have addressed the inadequacy as well as subjectivity of evidence before finally confirming the order of the disciplinary authority.

(iii) The third ground on which judicial review can be invoked is that decision is vitiated by considerations extraneous to the evidence and merits of the case.

In the instant application, the enquiry official was of the opinion that the repeated non-appearance of the applicant/charged official proves the veracity of all the relied upon documents because the applicant/charged official did not possess any document to produce before the enquiry proceedings. This tantamounts to indirect acceptance of charges clearly based on considerations extraneous to the evidence.

(iv) If the conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion.

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Although the applicant has pleaded that the quantum of punishment should be commensurate with the gravity of misconduct which has not been considered purportedly in the instant case of the applicant, we do not intend to interfere at this stage with the decisions of the disciplinary/appellate authority on the above ground at this stage.

7. In view of our findings and observations above, we deem it fit to remand the matter back to the appellate authority, who is directed under Rule 22(2)(b) of the RS (D&A) Rules to ascertain and confirm the objectivity and the sufficiency of the evidence against the applicant/charged official and to pass his necessary orders within a period of eight weeks from the date of receipt of a copy of this order. The applicant/charged official will be accorded a personal hearing for this purpose and the applicant/charged official is hereby directed to present himself with supporting evidence/documents, upon being summoned by the appellate authority.

8. In the interim period, as the applicant/charged official had already superannuated, the question of further terminal benefits, if any, will abide by the final decision of the appellate authority.

9. The O.A. is disposed of with the above observations. There will be no order on costs.

(Dr. Nandita Chatterjee)
Administrative Member

**(Manjula Das)
Judicial Member**

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