

(RESERVED ON 23.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **13TH** day of **FEBRUARY, 2019**.

ORIGINAL APPLICATION NO. 330/61/2013

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Suresh Chandra, aged about 51 years, Son of Sri Kunwar Sen, Resident of 214, Shakuntala Niwas, Defence Colony, Izzat Nagar, Bareilly.
.....Applicant.

VERSUS

1. Union of India, through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Additional Divisional Railway Manager, North Eastern Railway, Izza Nagar Division, Bareilly.
4. Senior Divisional Personnel Officer, North Eastern Railway, Izzat Nagar Division, Bareilly.
.....Respondents

Advocate for the Applicant : Shri T S Pandey

Advocate for the Respondents : Shri M K Yadav

ORDER
(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The present Original Application (OA) has been filed by the applicant seeking, primarily, the following reliefs:-

- "(a) Issue a writ, order or direction in the nature of Certiorari, quashing the order dated 01.09.2012 (Annexure No. A-1) and 18.10.2011 (Annexure A-2) with all consequential benefits to the applicant within a reasonable period of time whatever is fixed by this Hon'ble Court.
- (b) Award cost to the applicant from respondents.
- (c) Any other writ order or direction which this Hon'ble Court deem fit and proper in the facts and circumstances of the case, but may have not been pleaded and is found just and proper, be also awarded to the applicant and against the respondents."

2. The facts of the case as per the OA are that the applicant was initially appointed as Junior Clerk on 25.11.1984, through Railway Recruitment Board and has been serving in the Railways for last many years getting his promotions and becoming Office Superintendent Grade-I. In the year 2009, while the applicant was supervising the work in

Personnel Branch in the office of DRM, Izzat Nagar, N.E. Railways, one employee namely Basti Ram made a complaint dated 02.09.2010 alleging that the applicant had demanded a bribe of Rs. 1000/- for issuing his pay fixation order. Based on this complaint of Basti Ram, a vigilance trap was laid on the applicant on 15.09.2010 and an amount of Rs. 1000/- was recovered from his possession. Consequently, the applicant was suspended from services on 15.09.2010, and was served with a major penalty charge-sheet dated 23/28.12.2010 (Annexure No. A-3 to the OA) for his alleged misconduct. An Inquiry Officer was appointed and the inquiry was initiated against the applicant on 08.02.2011 and the applicant submitted his defence statement on 06.04.2011 (Annexure No. A-4 to the OA). After the conclusion of the inquiry, the applicant was asked by the inquiry officer to submit his defence brief which was accordingly submitted under Rule 9 (22) of the Railway Servants (Discipline & Appeal) Rules, 1968 on 06.5.2011 (Annexure No. A-5 to the OA). The Inquiry Officer submitted his final report on 27.05.2011 (Annexure No. A-6 to the OA) to the respondent no. 4, the Disciplinary Authority and also the applicant on 03.06.2011. After receipt of the inquiry report dated 27.05.2011, the applicant submitted his representation dated 15.06.2011 (Annexure No. A-7 to the OA) to the respondent no. 4. Thereafter, the respondent no. 4, as per applicant without considering and without making any reference to his representation dated 15.06.2011, passed the impugned order of punishment dated 01.09.2011 (Annexure No. A-1 to the OA).

3. The applicant submitted his departmental appeal dated 20.09.2011 (Annexure No. A-8 to the OA), against the order of punishment before the respondent no. 3, the Appellate Authority. As per the applicant, the Appellate Authority without considering any point mentioned in the appeal dated 20.09.2011 rejected the same vide order dated 18.10.2011 (Copy of the order not furnished by the applicant). The applicant, thereafter submitted the revision application dated 02.11.2011 (Annexure No. A-9 to the OA) against the orders dated 01.09.2011 and 18.10.2011 to the respondent no. 2. However, as per the applicant after coming to know about the proposed enhancement of the punishment and before the service of show cause notice by the revisionary authority i.e., respondent no. 2, the applicant withdrew the Revision Petition vide representation dated 13/16.01.2012 (Annexure No. A-10 to the OA).

4. It is also stated in the OA that one Shri Malkhan Singh was imposed with lesser punishment of reversion to one step lower in rank and pay for a period of three years by the Disciplinary Authority, whereas the applicant was awarded the punishment of three stages lower in rank & pay for a period of five years, which is discriminatory.

5. It is further stated that the Inquiry Officer held the applicant guilty of misconduct without any evidence on record and that respondent no. 4, while passing the impugned order dated 01.09.2011, did not consider the representation of the applicant dated 15.06.2011, hence, the impugned order of punishment dated 01.09.2011 deserves to be quashed.

6. The applicant had earlier challenged both the orders dated 01.09.2011 and 18.01.2011 by way of OA No. 113 of 2012 which was allowed vide order dated 27.04.2012 (Annexure No. A-12 to the OA). Against the order dated 27.04.2012, the respondents filed Writ Petition No. 45533 of 2012 before the Hon'ble High Court and the Hon'ble High Court vide order dated 19.09.2012 (Annexure No. A-13 to the OA) remanded the matter back to the Appellate Authority for fresh consideration & the Appellate Authority on reconsideration rejected the applicant's case vide order dated 16/20.11.2012 (Annexure No. A-2 to the OA). The applicant still aggrieved by the action of respondents has filed the present OA.

7. It is worth noting that in the OA, the applicant has mentioned that "it would be relevant to submit here respectfully that the Hon'ble High Court vide its order dated 19.02.2012 'illegally' remitted back the entire matter to the appellate authority.....and the appellate authority was bent upon to punish the applicant again vide its order dated 16/20.11.2012 issued the orders in gross violation of no evidence on record of the alleged trap."

8. In the counter affidavit filed by the respondents, it is submitted that in a departmental vigilance trap organized after a complaint against the applicant on 15.09.2010, the applicant was caught & held guilty of demanding Rs. 1000/- as bribe from one Shri Basti Ram. The applicant was placed under suspension on the same day and was served with major penalty charge sheet on 23/28.12.2010. After conclusion of inquiry, the applicant was given opportunities to submit his defense as per the rules. The applicant submitted his representation to the respondent no. 4 on 16.05.2011. The Disciplinary Authority after careful consideration of the

case and inquiry report vide order dated 01.09.2011 imposed the punishment of reversion from the post of Chief Office Superintendent to the post of Junior Clerk, the initial grade of appointment for a period of five years.

9. Against the order of the Disciplinary Authority dated 01.09.2011, the applicant preferred a departmental appeal dated 20.09.2011 which too was rejected by the Appellate Authority vide order dated 18.10.2011. The applicant, thereafter, preferred a revision petition on 02.01.2011, which was subsequently withdrawn by him on 13/16.01.2012. The applicant filed OA No. 113 of 2012 before this Tribunal and vide order dated 27.04.2012 this Tribunal quashed the order dated 01.09.2011 and 18.10.2011. The respondents filed Writ Petition No. 45533 of 2012 before the Hon'ble High Court against the order dated 27.04.2012. The Hon'ble High Court vide its judgement dated 19.09.2012 passed the following directions:-

"Accordingly, this petition succeeds and is allowed.

The order passed by the Central Administrative Tribunal dated 27.04.2012 in OA No. 113 of 2012 is hereby quashed. The matter is remitted for fresh consideration before the Appellate Authority in the manner, so provided in this order. The exercise is to be completed by the Appellate Authority preferably within a period of six weeks from the date of receipt of the order."

10. In compliance of the Hon'ble High Court's order, the Appellate Authority decided the representation of the applicant vide order dated 16/20.11.2012, rejecting the same through a detailed and speaking order. It is further stated that the issue in the OA has already been decided by the Hon'ble High Court vide order dated 19.09.2012 and thus the relief sought in the present OA is not maintainable due to principle of Res-Judicata and the OA is liable to be dismissed due to lack of merit.

11. In the rejoinder filed by the applicant, all the points which were highlighted in the OA have been reiterated.

12. Learned counsel for the respondents has also filed written submission reiterating that the applicant has been reverted to three stages lower from the existing pay scale for a period of five years with cumulative effect and appeal against the same has been rejected. It is also mentioned that the applicant had preferred a revision petition on 20.10.2011. When the Revisionary Authority issued show cause dated 11.01.2012 proposing to enhance the punishment, the applicant vide representation dated

13/16.01.2012 withdrew the revision petition. This withdrawal of revision petition by the applicant himself goes to show that the applicant has accepted the currency of punishment confirmed by the Appellate Authority. In the meanwhile, the applicant had moved this Tribunal and this Tribunal vide order dated 27.04.2012 quashed the orders dated 01.09.2011 and 18.10.2011 passed by the respondents. The respondents filed Writ Petition No. 45533 of 2012 before the Hon'ble High Court against the order dated 27.04.2012. The Hon'ble High Court vide its judgement dated 19.09.2012 remitted the matter back to the Appellate Authority for fresh consideration. In compliance of the Hon'ble High Court's order, the Appellate Authority passed the order dated 16/20.11.2012 and upheld the order of punishment dated 01.09.2011. It has been further stated that the applicant has got statutory remedy to file revision against the appellate order, but he failed to avail the statutory remedy to file revision petition. As such the OA is liable to be dismissed on the ground of alternative remedy. It is also mentioned that the applicant has not pointed out any procedural lapses in conduct of the departmental inquiry.

13. Learned counsel for the applicant has argued that the applicant was caught during a vigilance trap and Rs. 1000/- was recovered from his possession. However, the charge that he demanded Rs. 1000/- from one Shri Basti Ram could not be proved. It has been accepted in the Inquiry Report also that one Shri Basti Ram had put Rs. 1000/- in the applicant's pocket and ran away. He has further argued that it has not been clearly established whether Shri Basti Ram was himself present during the vigilance trap or not.

14. Learned counsel for the applicant has emphasised that the punishment imposed on the applicant by the Disciplinary Authority is very harsh. The appeal preferred by the applicant to the Appellate Authority has also been rejected and punishment imposed by the Disciplinary Authority has been upheld. Aggrieved by this, the applicant preferred a Revisionary Appeal and later on withdrew the same. However, he further sought relief by filing OA no. 113 of 2012 before this Tribunal. The order of the Tribunal was challenged by the respondents in the Hon'ble High Court and the order dated 27.04.2012 passed by this Tribunal was quashed and the matter was remitted back to the Appellate Authority for fresh consideration.

15. Learned counsel for the applicant has argued that despite Hon'ble High Court's order, the appeal preferred by the applicant has not been considered by the Appellate Authority and the punishment imposed by the Disciplinary Authority has been upheld.

16. Learned counsel for the respondents reiterated points mentioned in the counter reply and the written submission. It has been argued that this is a disciplinary case whereby a charge-sheet was issued to the applicant following all the rules and procedures for his misconduct and the allegation of demanding bribe has been established against the applicant through a vigilance trap. Full opportunity have been extended to the applicant in terms of obtaining his defence statement during the course of the inquiry and also completion of the inquiry. The Disciplinary Authority in its detailed speaking order imposed the punishment of reduction in grade to three levels below for five years with cumulative effect. The applicant preferred an Appeal against the order of the Disciplinary Authority which was considered and rejected by the Appellate Authority. Later in terms of Hon'ble High Court's order, the Appellate Authority reconsidered applicant's case and passed reasoned and speaking order dated 16/20.11.2012 upholding the punishment imposed on the applicant by the Disciplinary Authority. It is submitted by the learned counsel for the respondents that the applicant also preferred a Revisionary Appeal but the same was withdrawn by him. Thus, the applicant was given all the opportunities under the prescribed rules and laws not only from the Department but also from the order of Hon'ble High Court.

17. Heard the counsels for both the parties and perused the pleadings available on record.

18. In this case, as per the inquiry the applicant was caught taking bribe of Rs. 1000/- in a vigilance trap and was thereafter, issued charge sheet. Disciplinary Inquiry was conducted as per the rules giving the applicant full opportunity to present his case. The Disciplinary Authority considered the inquiry report and imposed the punishment of reduction in grade to three levels below for five years with cumulative effect. The appeal preferred by the applicant was also considered and rejected by the Appellate Authority. The Revision Petition preferred by the applicant was subsequently withdrawn by him on his own will. The applicant further sought relief by filing OA No.113 of 2012 before this Tribunal which was

allowed vide order dated 27.04.2012. However, the respondents challenged the order of this Tribunal dated 27.04.2012 before the Hon'ble High Court in Writ Petition no. 45533 of 2012 and the Hon'ble High Court vide order dated 19.09.2012 passed the following order:-

"Accordingly, this petition succeeds and is allowed.

The order passed by the Central Administrative Tribunal dated 27.04.2012 in OA No. 113 of 2012 is hereby quashed. The matter is remitted for fresh consideration before the Appellate Authority in the manner, so provided in this order. The exercise is to be completed by the Appellate Authority preferably within a period of six weeks from the date of receipt of the order."

19. The Hon'ble High Court has very categorically mentioned that order dated 27.04.2012 passed by this Tribunal in OA No. 113 of 2012 is quashed and the matter be remitted for fresh consideration by the Appellate Authority. It was also directed by the Hon'ble High Court that taking of appropriate decision by the Appellate Authority will be his independent exercise/concern and he is not to be guided by any observation if it has come in the judgment of the Tribunal or even of this Court. In terms of the directions given by the Hon'ble High Court, the Appellate Authority has reconsidered the appeal and passed detailed and speaking order dated 16/20.11.2012 upholding the punishment imposed by the Disciplinary Authority. After this order/decision passed in compliance of the Hon'ble High Court's order by the Appellate Authority, no further relief can be considered as requested in this OA.

20. It is worthwhile to mention here that as far as comparative case of another employee namely Shri Malkhan Singh is concerned, it is a settled law that parity in negative cannot be considered. These aspects are well covered in the following rulings:-

In the case of **Balbir Chand Vs. Food Corporation of India Ltd 1997 (3) SCC 371**, the Hon'ble Supreme Court has held that:-

*"6. It is further contended that some of the delinquents were let off with a minor penalty while the petitioner was imposed with a major penalty of removal from service. We need not go into that question. **Merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment lest the same mistaken view would be repeated.** Omission to repeat same mistake would not be violative of Article 14 and cannot be held as arbitrary or discriminatory leading to miscarriage of justice. It may be open to the appropriate higher authority to look into the matter and take*

appropriate decision according to law."

Further, in the case of **Union of India (UOI) and Ors Vs Ram Dass Rakesh**, the Hon'ble High Court of Delhi has held that :-

*"...5. When we apply these principles to the present case, our conclusion would be that the approach of the learned Tribunal is not correct in law. No doubt, in the first blush it appears that allegations against all three officials are of similar nature, which related to non-payment of 8 money orders to the payees. However, the role of the three officials, it is natural, would be different. Depending upon that if the disciplinary authority in the case of other two officials decided to impose a particular punishment, that would not mean that same punishment is to be meted out to the respondent as well. Before the disciplinary authority of the respondent the charge against the respondent for misappropriation of a sum of Rs. 12,000/- is proved. The charge in itself is a very serious charge and punishment of dismissal on such a charge should not have been interfered with unless the penalty is shockingly disproportionate to the proven charge. **Even if one proceeds with the assumption that other two officials are given lesser punishment wrongly, that would not mean that lesser punishment should have been given to the respondent as well, who had committed grave misconduct**, and when such a case is treated in isolation, even as per the Tribunal, the misconduct justified imposition of this kind of penalty. The concept of discrimination would be alien in such a situation..."*

21. In a large number of cases Hon'ble Apex Court has also held that the Courts cannot scrutinize or examine the disciplinary proceedings as appellate forum and the scope of judicial review of the disciplinary proceedings by the Courts has been held to be very limited. In the case of **B.C. Chaturvedi vs. Union of India & Ors. 1995 (6) SCC 749**, Hon'ble Supreme Court has held as under:-

"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 proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the

delinquent officer is guilty of the charge. 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. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

In the case of **State Bank of India v. Samarendra Kishore Endow [1994 (1) SLR 516]**, the Hon'ble Supreme Court has held that a High Court or Tribunal has no power to substitute its own discretion for that of the authority. Relevant portion of the judgement is quoted below:-

"10. On the question of punishment, learned counsel for the respondent submitted that the punishment awarded is excessive and that lesser punishment would meet the ends of justice. It may be noticed that the imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It "is not an appeal from a decision, but a review of the manner in which the decision was made". In other words the power of judicial review is meant "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 by law to decide for itself, a conclusion which is correct in the eyes of the Court"."

22. It is, thus, clearly established that the applicant has been given due opportunities to represent his case and seek redressal of his grievances by way of preferring appeal, having opportunity to prefer Revisionary Appeal and later seeking relief from this Tribunal by filing OA No. 113 of 2012 and thereafter by way of directions given by the Hon'ble High Court to the Appellate Authority to reconsider his appeal. We do not find any scope for granting any further relief to the applicant as prayed in this OA.

23. Accordingly, in view of the above mentioned, the OA lacks merit and the same is dismissed. No order as to cost.

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

Arun..