

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the _____ day of **January 2019**

Present:

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Rakesh Sagar Jain, Member (J)

Original Application No. 371 of 2009
(U/S 19, Administrative Tribunals Act, 1985)

Rajeev Kumar Srivastava
Aged about 47 years, (D.O.B. – 06.04.1962),
S/o Late Ram, Narain Lal, R/o D-64/122D,
Madhopur, Sagra, Varanasi.

.....Applicant.

By Advocates – Shri K. K. Mishra.

VERSUS

1. Union of India through, General Manager, North Eastern Railway, Gorakhpur.
2. General Manager (P)/Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. General Manager (Commercial)/Chief Commercial Manager, North Eastern Railway, Gorakhpur.
4. Divisional Railway Manager, North Eastern Railway, Varanasi.
5. Additional Divisional Railway Manager, North Eastern Railway Varanasi.
6. Senior Divisional Commercial Manager, North Eastern Railway, Varanasi.
7. Divisional Commercial Manager, North Eastern Railway, Varanasi.

..... Respondents.

By Advocate : Shri Rishi Kumar

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain :

1. The present O.A. has been filed under section 19 of Central Administrative Tribunals Act, 1985 by applicant Rajeev Kumar Srivastava with prayer for following reliefs:
 - i. That this Hon'ble Court may graciously be pleased to quash ad set aside the impugned orders dated 27.07.2007 passed by respondent No. 6 (Annexure A-8), Appellate Order dated 20.12.2007 passed by respondent No. 5 (Annexure A-10).

- ii. That this Hon'ble Court further be pleased to quash and set aside the impugned order dated 21/23.10.2008 (partly) passed by respondent No. 3.
 - iii. To restore the grade, scale of pay, post/service of the Applicant as was on 26.07.2007 and accordingly to pay the differences of pay as would have been paid and actually has been paid.
 - iv. That this Hon'ble Court further be pleased to pass such other and/or further order as may be deemed necessary in the circumstances of the case.
2. It is stated in the O.A. that while working as Commercial/Parcel Clerk applicant was trapped by the vigilance and memorandum of charge sheet dated 05.07.2006 for major punishment was served upon him in which the allegations were that he earned Rs.100/- illegally for personal gain and that Rs.300/- excess money without declaration was found on his person. He was found guilty of the offence with which he had been charge sheeted. The enquiry report was considered by respondent No. 6 without considering the reply of the applicant and imposed the penalty of compulsory retirement by way of unreasoned and non-speaking order dated 27.07.2007. His appeal against the order of the D.A. was dismissed by Respondent No. 5 by way of order dated 20.12.2007 which again was an order passed without application of mind.
3. Applicant avers that he was deliberately trapped by the Vigilance through a Decoy. Respondent No. 7 vide order dated 23.02.2007 issued a show cause notice to the applicant along with the Enquiry report dated 09.02.2007 and directed him to submit representation in respect of his defence, however the date of submitting the Enquiry Report is not mentioned and attached as Annexure No. A-6. It is further averred that the enquiry officer who is himself a Vigilant Inspector had supported the illegal act of his colleague showing his bias and which violates Rules 704 and 705 of Railway Vigilance Manual (Annexure-A7).
4. It is also the case of applicant that respondent No. 6 who is neither the Appointing authority nor the Disciplinary Authority without considering the reply of applicant imposed the punishment of Compulsory Retirement by way of impugned order dated 27.07.2007 (Annexure-A8) which is unreasoned and non-speaking and said punishment cannot be imposed as per Schedule- II of the Railway Servant (Discipline & Appeal) Rules, 1968. Similarly, the order dated

20.12.2007 (Annexure-A10) passed by AA (respondent No. 5) has been passed without application of mind. Applicant further avers that the Revisional Authority (respondent No. 3) finding discrepancies in the Enquiry report vide order dated 21/23.10.2008 reduced the punishment to lower scale of pay Rs.4000-6000 with minimum grade of Rs.4000/- for the entire service career which is not permissible under Rules.

5. It is also the case of applicant that reduction in rank permanently is not permissible under and placed reliance upon judgments N.C.Jena v/s Union of India and Jagjit Singh v/s UOI. It has been further averred that applicant has been (1) reverted from the post of Head Commercial Clerk in the scale of Rs.5000-8000 to Commercial Clerk in the pay scale of Rs. 4000-6000 and confined within minimum pay of Rs. 4000/- as a permanent measure; (2) Basic pay of applicant has been reduced to Rs.4000/- at the bottom of reverted post which is lower pay than what was drawn before reduction in rank i.e. Rs. 6650 per month; (3) Promotion has been banned for ever and therefore reduction of punishment to a lower scale of pay in the minimum pay permanently is not tenable in the eye of law as multiple punishment have been awarded for one and the same alleged offence.
6. Hence, the present O.A. challenging the order of the Disciplinary Authority and the Appellate Authority as well as order dated 21/23.10.2008 passed by the Revisional Authority whereby the punishment of compulsory retirement was reduced to a lower time scale of pay Rs.4000-6000 in minimum pay of Rs.4000/- for entire service career, which is not permissible under Rule.
7. In the counter affidavit, it has been averred that the charges against the applicant were proved in the enquiry proceedings which were carried out in accordance with Railway Servants (Discipline and Appeal) Rules 1968. It has been further averred that the penalty has been imposed by the Senior Divisional Commercial Manager, North Eastern Railway, Varanasi in the capacity of the Appointing Authority of the applicant and therefore, the said officer has awarded the punishment to the applicant in that capacity. It is also averred in the counter affidavit that the enquiry officer namely Shri Amiy Raman is the Personnel Officer and not a Vigilance Inspector and, therefore, it cannot be said that the enquiry was vitiated on this account.

8. The respondents further aver that "Here in the present case the only deficiency in the impugned order is that the period of punishment has not been described. In such case the Hon'ble Court could have remanded the matter to the Reviewing Authority who would rectify the deficiency and pass a fresh order in accordance with law. Hence, the O.A. being devoid of merit be rejected.
9. In the Rejoinder affidavit filed by applicant, denying the averments made in the counter affidavit has reiterated and reaffirmed the averments made in the O.A. He has further averred that in terms of judgment of Hon'ble Apex Court in *Moni Shanker v/s Union of India*, 2008 (3) SCC 484, there has been violation of Rules 704 and 705 of Railway Vigilance Manual and the entire disciplinary proceedings deserves to be quashed. It is also averred that the applicant in pursuance of selection made by Railway Recruitment Board dated 20.05.1986 was appointed by Chief Personnel Officer/General Manager (Personnel) vide order dated 25.03.1988 and this order was communicated respondent No. 6, as such, it is wrong to state that respondent No. 6 is the appointing authority.
10. Applicant further avers in the rejoinder affidavit that the Enquiry Officer was on deputation for last 5 years in the Vigilance department and therefore is bound to be puppet in the hands of the Head of the Vigilance and in fact enquiry has not been fairly conducted by Amai Raman and in light of judgment of Hon'ble Apex Court in *UOI v/s Prakash Kumar Tandon*, 2009 (2) SCC 541, enquiry conducted by the Vigilance Officer is not sustainable.
11. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
12. Learned Counsel for applicant, during his arguments reiterated pleas raised in the O.A. and the rejoinder affidavit regarding the manner in which the disciplinary proceedings have been conducted in violation of rules and regulations and that looking to the orders passed by the various authorities during the proceedings, it is apparent that the said orders violate the procedural rules as well as principle of natural justice.
13. On the other hand, learned counsel for the respondents submitted that the enquiry proceedings were conducted in accordance with the procedure established by law and at no point of time there was miscarriage of justice.

14. The law is settled that the scope of judicial review in the matter of DE proceedings is highly limited. Judicial review, as per the law laid down is normally resorted to only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached. It is settled law that the Tribunal should not enter into the arena of facts which tantamount to re-appreciation of evidence. (Read with advantage *State Bank of Bikaner & Jaipur v/s Nemi Chand Nalwaya*, (2011) 4 SCC 584, *B.C. Chaturvedi v. Union of India*, AIR 1996 SC 484 and *R.S. Saini v. State of Punjab and ors*, (1999) 8 SCC 90)

15. So, the law is well settled that the scope of judicial review is limited to the deficiency in decision-making process and not the decision. The deficiency in decision – making process is whether the inquiry was held by a competent officer; whether rules of natural justice are complied with; whether the findings or conclusions are based on some evidence; whether the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion; and that the 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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge as the disciplinary authority is the sole judge of facts. Where appeal is presented, the Appellate Authority has coextensive power to re-appreciate the evidence or the nature of punishment. 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 only 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.

16. In the instant case, we find that the enquiry has been conducted as per the prescribed procedure and principles of natural justice have been observed at every stage of the enquiry.
17. Strangely enough, in his relief the applicant has not made any prayer regarding the report of the Inquiry Officer. During the course of hearing, learned counsel for the applicant laid much emphasis on the findings of the inquiry. However, from the relief claimed, we find that the inquiry report and the findings recorded therein are not under challenge. The applicant has only sought quashment of the order of penalty, the order passed by the Appellate Authority and Revisional Authority. In absence of there being any challenge to the inquiry report and the findings recorded therein, it is not permissible in law to examine the validity of the findings of the inquiring authority. Furthermore, the Tribunal is not expected to re-appreciate the evidence adduced in the enquiry proceedings.
18. In the instant case, after considering the materials available on record including the applicant's representation made against the inquiry report, the orders of Disciplinary Authority, Appellate Authority and Revisional Authority, we find that the applicant has been unable to show any infirmity in these orders though he has challenged the propriety and legality of the punishment imposed upon him by the Revisional Authority which is discussed later on.
19. Apart from the above challenge to the various orders passed in the Disciplinary proceedings, applicant has argued that the enquiry officer Amai Raman being a Vigilant Inspector had supported the illegal act of his colleague showing his bias and which violates Rules 704 and 705 of Railway Vigilance Manual (Annexure-A7). However, this stand of applicant was challenged in the C.A. that enquiry officer namely Shri Amai Raman is the Personnel Officer and not a Vigilance Inspector and, therefore, it cannot be said that the enquiry was vitiated on this account. Whereupon, in the R.A. changes his stance and avers that said Enquiry Officer was on deputation for last 5 years in the Vigilance department and therefore is bound to be puppet in the hands of the Head of the Vigilance and in fact enquiry has not been fairly conducted by Amai Raman and in light of judgment of Hon'ble

Apex Court in UOI v/s Prakash Kumar Tandon, 2009 (2) SCC 541, enquiry conducted by the Vigilance Officer is not sustainable.

20. However, this contention of Enquiry officer being a personnel from Vigilance Department has no force and to be rejected. In the C.A. it has been clearly said that enquiry officer namely Shri Amai Raman is the Personnel Officer and not a Vigilance Inspector whereupon changing his stance in the R.A avers that said Enquiry Officer was on deputation for last 5 years in the Vigilance department and therefore is bound to be puppet in the hands of the Head of the Vigilance. So, applicant's contention is based on conjectures and assumption regarding the fairness of the E.O.

21. It is also the case of applicant that respondent No. 6 who is neither the Appointing authority nor the Disciplinary Authority imposed the punishment of Compulsory and said punishment cannot be imposed as per Schedule- II of the Railway Servant (Discipline & Appeal) Rules, 1968. Whereas respondents say that the penalty has been imposed by the Senior Divisional Commercial Manager, North Eastern Railway, Varanasi in the capacity of the Appointing Authority of the applicant and therefore, the said officer has awarded the punishment to the applicant in that capacity. There is no material on record to rebut the stand of the respondents, as such, the contention of applicant fails in this regard.

22. It is also argued by applicant that in terms of judgment of Hon'ble Apex Court in Moni Shanker v/s Union of India, 2008 (3) SCC 484, there has been violation of Rules 704 and 705 of Railway Vigilance Manual and the entire disciplinary proceedings deserves to be quashed. Whether there was violation of the said rules was a plea to be taken during the disciplinary proceedings when evidence was being adduced. It is too late in the day to rake up this issue in the present O.A. where the scope of judicial review is very limited.

23. It has been argued by learned counsel for applicant that the Revisional Authority (respondent No. 3) vide order dated 21/23.10.2008 reduced the punishment to lower scale of pay Rs.4000-6000 with minimum grade of Rs.4000/- for the entire service career which is not permissible under Rules and relied upon N.C.Jena v/s Union of India, 2005 (1) CAT 258 and Jagjit Singh v/s UOI being O.A. No. 1145 of 2001 decided by CAT, Bench Allahabad vide order dated 10.02.2001.

24. Learned counsel for the applicant has argued that the modified punishment imposed by the Revisionary Authority (respondent No. 3) vide order dated 21/23.10.2008, reducing the rank of the applicant to the lower scale of Rs.4000-6000, with the pay at the level of Rs.4000/- permanently for the rest of applicant's service period, is not permissible under the Rules, since it comprises of two punishments, i.e. reduction in scale and permanently withholding the promotion. Learned counsel relied upon the judgment of this Tribunal in the case of N.C.Jena v/s Union of India, 2005 (1) CAT 258 and Jagjit Singh v/s UOI in O.A. No. 1145 of 2001 decided by CAT, Allahabad Bench vide order dated 10.02.2001. In the case of N.C.Jena (supra), it was held by CAT, Cuttack Bench following another judgment of Madras Bench in the case of R. Devdanam v/s UOI, 1989 (2) SLJ (CAT) 131, that reduction in rank with permanent debarring of promotion, is not permissible under law. In the case of Jagjit Singh (Supra), the punishment of reduction in rank to lower scale at the minimum of the lower pay scale for a period of 15 years, when the employee was superannuating with 14 years, it was held by the Tribunal in that case as under:

"Of course, when an individual has just one or two years to superannuate , it may not be construed as "permanent measure", for in that event, prescription of one or two years as the currency of penalty becomes definite. However, prescription of 15 years, in a case where the individual has only 14 years to go for superannuation, though is a definite period, the inevitable impact of the same is that the penalty is on a permanent measure. As such, the penalty order in this case, which prescribes a long period of 15 years which goes beyond the date of superannuation of the applicant cannot be sustained."

25. Following the judgments as discussed above, the modified punishment of reduction to lower time scale of Rs.4000-6000 in minimum of Rs.4000/- for entire service period, is not permissible under the Rules. Hence the matter is fit to be re-considered by the respondents. The Revisionary Authority, is therefore, directed to re-consider suitable modification of his order dated 21/23.10.2008 within a period of three months from receipt of a copy of this order

26. The Tribunal is not expected to re-appreciate the evidence adduced in the enquiry proceedings. It would be profitable to refer Uttarakhand Transport v/s Sukhveer Singh, (2018) 1 SCC (L&S) 1, it was held by the Hon'ble Apex Court that :

"8. The Respondent contended that the punishment of dismissal is disproportionate to the delinquency. It is submitted that he was working as a driver and the irregularity in issuance of tickets was committed by the conductor. We are in agreement with the findings of the inquiry officer which were accepted by the disciplinary authority and approved by the appellate authority and the labour court that the Respondent had committed the misconduct in collusion with the conductor. It is no more res integra that acts of corruption/misappropriation cannot be condoned, even in cases where the amount involved is meagre."

27. In view of the discussions in the foregoing paragraphs, we do not find any infirmity in the impugned orders except for correctness of mode of punishment. Accordingly, the O.A. is disposed of as per direction contained in para no. 25 of this Order. No costs.

(RAKESH SAGAR JAIN)

MEMBER-J

(GOKUL CHANDRA PATI)

MEMBER-A

/Shashi/