

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 02nd day of April 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00385 of 2015

Ashok Kumar Bhatia son of P.D. Bhatia, R/o H. No. 596 Gwal Toli, Civil Lines, District Jhansi, presently working as Account Assistant in the incentive section of Workshop Accounts Office, Jhansi.

.....Applicant

By Adv: Shri Ashish Srivastava

Versus

1. Union of India through General Manager, North Central Railway, Head Quarter Subedarganj, Allahabad.
2. Finance Advisor and Chief Accounts Officer (WST) Headquarter, North Central Railway, Allahabad.
3. Workshop Accounts Officer, (WAO), Office Jhansi Division, North Central Railway, Jhansi.

.....Respondents

By Adv. Shri P. Mathur

O R D E R

1. The present O.A has been filed by Ashok Kumar Bhatia under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-
 - (i) This Hon'ble Tribunal may be pleased to quash the impugned order dated 30.4.2013 passed by the respondent No.3 and the order dated 03.2.2015 passed by the appellate authority (Annexure No. A-1 & A-2) to this original application.
 - (ii) This Hon'ble Tribunal may be pleased to direct the respondents to allow all consequential benefits to the applicant as if no such penalty was ever awarded to the applicant.
 - (iii) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may be given in favour of the applicant.

(iv) Award the costs of the original application in favour of the applicant".

2. Case of applicant is that in 2003, he was posted as Accountant in the Settlement Section of office of respondent No.3 where he continuously worked from 11.12.2008 to October 2011 and thereafter posted in Incentive Section vide order dated 19.10.2011. He was served with the charge-sheet on 13.3.2013 alleging therein that applicant did not maintain the Funeral Advance Register and did not inform Senior Section Officer (Settlement) about the same and resultantly amount of Rs. 56051/- was pending as suspense absence and if the applicant had maintained the Funeral Advance Register, the balance suspense amount would have settled. It is further case of applicant that as per Code of Accounts, there is no specific mention that the Funeral Advance Register is to be maintained and while posted in the concerned section, he was not handed over the any record of the Funeral Advance Register and further as per the duty list pertaining to Assistant Accountant issued by the Senior Section Officer, nothing is mentioned about maintaining the Funeral Advance Register though duties and responsibilities of each official is mentioned in detail, therefore, there was no occasion for the applicant to maintain the said register. However, on conclusion of disciplinary proceedings, he has been awarded the penalty of withholding of one increment for one year without cumulative effect.

3. It has been further averred in the O.A. that:-

"4.12 That the applicant has also sought information under Right to Information Act, 2005 regarding maintenance of Funeral Register from Allahabad Division and on 24.05.2013 the applicant was informed that the Funeral Register is jointly maintain by the Assistant Commercial Officer (Welfare) and Chief Commercial Officer, Welfare in the department"

4.13 That the applicant through Smt. Mamta has also sought information from the Railway Board about maintenance of Funeral Advance Register and the department who maintain the same. In reply to the aforesaid query, the Joint Director (Accounts) Railway Board vide their letter dated 29.08.2013 intimated that in the Indian Railway Establishment Code and Accounts Code there is no such provision for maintaining the Funeral Advance Register.

4. It has been further averred in the O.A. that, as per, the information received under RTI Act from respondent-Headquarters that the onus of maintaining the Funeral Advance Register rest on the provident fund and administrative section and as per information received from finance and account section, the Funeral Advance Register is not maintained in the North Central Railway. That the Appellate Authority though accepting that his plea about maintenance of Funeral Advance Register, still imposed the penalty upon the applicant. The balance in the suspense account does not amount to any loss to the government as such order dated 30.04.2013 whereby respondent No. 3 imposed the penalty upon him and which order was upheld by the Appellate Authority by order dated 03.02.2015 be quashed.

5. In the counter affidavit it has been averred that admittedly there was negligence by the applicant by not clearing of the Funeral Advance in the suspense account either through maintaining Funeral Advance Register or not taking necessary action which resulted in Accumulation of suspense balance of Funeral Advance of Rs. 56051/- and, therefore, the act of applicant amounts to dereliction of duty for which he has been rightly penalized. Regarding the allegation in the O.A. about the information received under Right to Information Act to the effect that there is no provision for maintaining the Funeral Advance Register or that the said Register is to be maintained by other Officers in the Department, has not been denied by the respondents in their counter affidavit. Though as per para

24 of I.R.E.C Volume 1, provision has been made for having a Funeral expense to meet the Funeral expense of the family of a deceased subscribers. From the duty list filed with the counter affidavit, it is clear that the duty has been cast upon the applicant being the Account Assistant to maintain the said Register and a watch on suspense balance.

6. In the rejoinder affidavit, it has been averred that Appellate Authority while accepting that there is no provision for maintenance of Funeral Advance Register upheld the penalty order on a different fact that the applicant was negligent in clearance of suspense balance by initiating necessary action to clear it.
7. Before proceeding further, it would be pertinent to refer to the charge leveled against the applicant, which reads as follows:-

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"Imputation of misconduct and negligence in working system, on the basis of which action is proposed to be taken against Shri Ashok Bhatia, Accounts Assistant, WAO's office/ Jhansi.

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By this above act of omission & commission Shri Ashok Bhatia, Accounts Assistant, has displayed lack of devotion to duty, and has acted in a manners unbecoming of a Railway Servant, contravening provision of Rule No. 3 (i), (ii) & (iii) of Railway Service (Conduct) Rules, 1966".

8. Looking to the language of the charge-sheet, it is apparent that the applicant has been charged with the allegation that he did

not maintain the Funeral Advance Register. However, looking to the pleadings of the parties as well as the documents attached by the respective side, the question arises whether it was any part of the duties of the applicant to maintain the Funeral Advance Register.

9. I have heard and considered the arguments of learned counsel for the parties and perused the pleadings on record as well as documents relied upon by either side.
10. Learned counsel for applicant argued that the findings of the Disciplinary Authority and Appellate Authority are perverse and based on mis-appreciation and non-appreciation of the facts alleged against the applicant and the finding is such as no reasonable person would have ever reached and no question of misconduct or lack of devotion to duty on part of applicant was proved during the enquiry but yet the DA and AA have completely misread the facts of the case and wrongly penalised the applicant and placed reliance upon Union of India v/s J.Ahmed, AIR 1979 SC 1022.
11. In so far as the question regarding permissibility of this Tribunal in a judicial review to interfere in the departmental proceedings, it has been held in Kuldeep Singh v. Commissioner of Police & others, (1999) 2 SCC 10, by the Hon'ble Apex Court that it is permissible for this Tribunal in a judicial review to interfere in the departmental proceedings where the findings are perverse in nature without any evidence. Relevant portion of the said judgment reads thus:-

"Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

A broad distinction has, therefore, to be maintained between the decisions which are perverse and those

which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with."

12. It is no more res integra that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible 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 (See B.C. Chaturvedi v. Union of India, AIR 1996 SC 484).
13. In the instant, I test the decision of the Disciplinary Authorities on the grounds that the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and the conclusion or finding are such as no reasonable person would have ever reached.
14. So, the question to be gone into, is to see, as argued by LC for applicant, is whether the applicant was under a duty to maintain the Funeral Advance Register, and if, he failed to do so, the applicant is guilty of failing to maintain absolute integrity,

devotion to duty and acting in a manner which is unbecoming of a railway servant.

15. Both parties have relied upon the duty Register prepared by P.K. Pateria, Senior Section Officer who issued the duty list pertaining to the Assistant Accountants. I have perused the duty sheet. It nowhere prescribes that the Funeral Advance Register is to be maintained by the applicant. Even otherwise as per information given to the applicant through R.T.I Act by the Senior Accounts Officer-II is that “**ହକ୍କରୁହୁ ଜ୍ୟ ଲକ୍ଷ୍ମୀ କୁ ଲଗ୍ରକ , ଓ ହକ୍କରୁହୁ ଜ୍ୟ ଯେତ୍କ ଲଗ୍ରକ ଏବଲ ଇଲ୍କି ଦ୍ୱାରା ଜ୍ୟକୁ କାହାର ଦକ୍ଷତା ମୁୟେକ ଉଗ୍ର ଗା**”.
16. In view of the aforementioned two documents i.e. the duty sheet and the letter containing the information under R.T.I Act, it is clear that no Funeral Advance Register is maintained in the Railway Department. Even otherwise, the duty sheet does not prescribe that Funeral Advance Register is to be maintained by the applicant.
17. Therefore, it cannot be said that applicant displayed lack of devotion to duty and acted in a manner unbecoming of a Railway Servant on the basis of facts of case and settled principles of law, I am of the view that finding/decision of DA & AA is based on no evidence and cannot be accepted. O.A. is accordingly, allowed. Impugned orders dated 30.4.2013 and 3.2.2015 are quashed and applicant is allowed the consequential relief which are permissible under Rule since the penalty has been set aside. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

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