CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.4304 of 2014

This the 7th Day of March 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Mahesh Chander Singh, Head Goods Clerk,
Aged about 56 years,
S/o Sh. Nem Singh
R/o 1375, DDA Janta Flat,
GTB Enclave, Delhi-93.

....Applicant

(By Advocate : Shri R.K. Jain)

VERSUS

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.

2. The Addl. Divisional Railway Manager (OP),
Northern Railway,
DRM Office State Entry Road,
New Delhi.

3. The Sr. Divisional Commercial Manager (Fr.),
Northern Railway,
DRM Office, State Entry Road,
New Delhi.

.....Respondents

(None present)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Today when this matter was taken up for consideration, none appeared on behalf of the respondents. Since this matter is of 2014 and the applicant is challenging the disciplinary proceedings and the orders passed thereon by the respondents, we proceed to decide this case by invoking the

provisions of Rule 16 of the CAT (Procedure) Rules, 1987 and accordingly, we heard learned counsel for the applicant.

2. In this case, the applicant is seeking the following reliefs:-

> "I. To quash and set aside the order dtd 12.4.2012 passed by the respondent no. 3 vide which the applicant has been awarded the punishment and the order dated 11.10.2013 vide which the appeal has been rejected and findings submitted by the Enquiry Officer to the extent that charge No.1 has been held partially proved against the applicant.
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> II. To grant the applicant all the consequential benefits.
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> III. Any other relief which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case may also be awarded to the applicant.
>
> IV. Cost of the proceedings may also be awarded to the applicant."

3. The grievance of the applicant is against the findings returned by the Enquiry Officer on the charge No.1 leveled against the applicant and the orders of the disciplinary and appellate authorities.

4. The brief relevant facts of the case as stated in the OA are that the applicant, who is working with the respondents as Head Goods Clerk and posted at Delhi Kishanganj Railway Station, was issued articles of charges along with statement of imputations of misconduct and the list of witnesses and documents vide Memorandum dated 31.12.2010. The charges against the applicant were as follows:-

"A preventive check was conducted by Northern Railway Vigilance in Goods office/SSB on 10.07.2010. During the course of check Shri Mahesh Chand Singh, Hd.GC/SSB was found responsible for the lapses as mentioned below:-

Sh. Ramesh Kumar GS/SSB, was found responsible for not showing a few unloaded and delivered consignment (cement of 70 wagons as on hand for removal and under wharfage on 08/07/2010 & 09/07/2010 in delivery book on page no.61,71,77 & 82 and also in unloading book which was delivered to the parties on 26/06/2010, and also in unloading book which was delivered to the parties on 26/06/2010, 02/07/2010, 06/07/2010, 09/07/2010 even after expiry of permissible free time for removal at 0325 hrs on 27/06/2010, 1630 hrs on 02/07/010, 0415 hrs on 03/07/2010, 0400 hrs on 04/07/2010, 0715 on 07/07/2010 and 0645 on 10/07/2010, while he was working in shift from 0800 to 1600 hrs on 10/07/2010.

This shows his malafide intention for personal gain.

By above act of omission and commission Shri Mahesh Chand Singh, Hd.GC/SSB, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner of unbecoming of a Railway servant, thereby contravened the provision of Rule No.3.1(i), (ii) and (iii) of Railway Servant Conduct Rules 1965."

4.1 The applicant submitted his reply to the said charge sheet on 24.1.2011. Two PWs were examined in the said matter by the Enquiry Officer and after completion of inquiry proceedings, the Enquiry Officer returned his findings holding that charge no.1 is partially proved.

4.2 Thereafter, on 22.2.2012, the applicant submitted his representation to the disciplinary authority against the findings returned by the Enquiry Officer.

4.3 The disciplinary authority awarded the punishment of reduction in pay with immediate effect from Rs.17120/- to

Rs.16130/- in Grade Rs.9,300-34,800/- [+4200] by two stages in the same time scale for a period of six months without cumulative effect, vide order dated 12.4.2012.

4.4 Thereafter, on 16.5.2012, applicant submitted his appeal to the appellate authority against the aforesaid order of the disciplinary authority and the appellate authority vide order dated 11.10.2013 rejected the appeal of the applicant.

4.5 Being aggrieved, the applicant has filed this OA seeking the reliefs as quoted above.

5. Pursuant to notice issued to the respondents, the respondents have filed their reply in which they have stated that a vigilance check was conducted by Northern Railway Vigilance at Goods Office SSB on 10.7.2010 and it was observed that the applicant had committed irregularity and accordingly, he was chargesheeted as quoted above.

5.1 The disciplinary authority after examined and considered the inquiry report submitted by the enquiry officer and reply of the applicant to the said inquiry report, the disciplinary authority awarded the punishment of reduction of two stages in the same time scale for six months without cumulative effect vide order dated 12.4.2012. Appeal preferred by the applicant dated 16.5.2012 was considered by the appellate authority. However, the said authority upheld

the order of the disciplinary authority vide order dated 11.10.2013.

5.2 They further stated that the applicant has failed to exhaust the administrative remedies available to him inasmuch as he has failed to submit any revision application and, therefore, the OA under reply is premature and deserves to be dismissed on this ground alone.

5.3 They also stated that the competent authorities have passed the impugned orders by following due process of rules and after taking into account all material facts into consideration and, therefore, no cause of action has accrued to the applicant, as no rule or binding instructions have been infringed in passing the impugned orders and therefore, this case does not deserve any kind of interference into the impugned orders while exercising the power of judicial review. To substantiate their stand, the placed reliance on the decision of the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi vs. UOI***, AIR 1996 SC 484.

6. Counsel for the applicant during the course of hearing submitted that departmental inquiry has not been held against the applicant as per the relevant rules and that there is no evidence against the applicant during the departmental enquiry. He further submitted that enquiry officer has held that the charge No.1 has partially proved against the applicant however the enquiry officer did not specifically state

as to which part of the charge is proved against the applicant as such the said report is ambiguous and hence liable to be set aside on this ground alone.

6.1 Counsel further submitted that disciplinary and appellate authorities have not applied their minds to the facts of this case.

6.2. Counsel also submitted that applicant has been discriminated in the matter of award of punishment inasmuch as in the case of one Shri Ramesh Kumar, against whom the enquiry officer has held the same charged proved in the same incident, has been exonerated by the respondent no.3 vide order dated 18.6.2012 whereas the applicant has been awarded the punishment of reduction in pay with immediate effect from Rs.17120/- to Rs.16130/- in Grade Rs.9,300-34,800/- [+4200] by two stages in the same time scale for a period of six months without cumulative effect.

7. Before coming to the issues raised by the applicant in this OA, it is pertinent to note that the law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme Court in the following judgments:

(1). In the case of ***K.L.Shinde Vs. State of Mysore*** (1976) 3 SCC 76), the Hon'ble Supreme Court in para 9 observed as under:-

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before P. S. I. Khada - bazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabasappa, (1963) 2 SCR 943=AIR 1963 SC 375 where it was held as follows:-

> "Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against who it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the proceedings are not open to attack on the ground that the enquiry

was not conducted in accordance with the procedure followed in courts.

2. In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the explanation of the witness will in its entirety, take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him ,and admitted in evidence, a copy thereof is given to the party and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence, is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

(2) Again in the case of ***B.C.Chaturvedi Vs. UOI & Others*** (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-

"12. 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 eye of the Court. When an inquiry is conducted on charges of a 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 be 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 therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the 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 of 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(3) Further in the case of ***Union of India and Others Vs. P.Gunasekaran*** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution

of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;
b. the enquiry is held according to the procedure prescribed in that behalf;
c. there is violation of the principles of natural justice in conducting the proceedings;
d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;
f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
i. the finding of fact is based on no evidence."

9. Keeping in view the aforesaid observations of the Apex Court, this Court finds that in this case charge levelled against the applicant, who was discharging the duties of Head Goods Clerk, as quoted above, are that a preventive check was conducted by Northern Railway Vigilance in Goods office/SSB on 10.07.2010. During the course of check Shri Mahesh Chand Singh, Hd.GC/SSB was found responsible for the lapses as mentioned below:-

> "Sh. Ramesh Kumar GS/SSB, was found responsible for not showing a few unloaded and delivered consignment (cement of 70 wagons as on hand for removal and under wharfage on 08/07/2010 & 09/07/2010 in delivery book on page no.61,71,77 & 82 and also in unloading book which was delivered to the parties on 26/06/2010, and also in unloading book which was delivered to the parties on 26/06/2010, 02/07/2010, 06/07/2010, 09/07/2010 even after expiry of permissible free time for removal at 0325 hrs on 27/06/2010, 1630 hrs on 02/07/010, 0415 hrs on 03/07/2010, 0400 hrs on 04/07/2010, 0715 on 07/07/2010 and 0645 on 10/07/2010, while he was working in shift from 0800 to 1600 hrs on 10/07/2010"

The enquiry officer after conclusion of the said inquiry partially proved the charge No.1 against the applicant and on receipt of inquiry officer's report, the disciplinary authority issued a Memorandum to the applicant vide which tentatively proposing to impose the punishment of reduction in pay with immediate effect from Rs.17120/- to Rs.16130/- in Grade Rs.9,300-34,800/- [+4200] by two stages in the same time scale for a period of six months without cumulative effect. The applicant submitted his reply to the said show cause notice and the disciplinary authority passed the impugned order confirming the above proposed punishment vide order dated 12.4.2012 and thereafter the appeal preferred by the applicant was also rejected by the appellate authority after passing a detailed and reasoned order.

10. This Court also perused the said Orders of the disciplinary & appellate authorities and did not find any illegality in the said orders. Also having regard to the findings

of the Enquiry Officer, we also find that enquiry officer on the basis of evidence came on record proved charge no.1 against the applicant.

11. So far as the contention of discrimination in award of punishment is concerned, the said issue has also been considered by the respondents and observed that the similar charge was proved against the co-delinquent, who had already attained the age of superannuation on 31.8.2011, i.e., much before the final order passed on 18.6.2012 in the case of said co-delinquent and further observed that any punishment imposed upon the said co-delinquent in commensurate with the lower magnitude of irregularity would be infructuous and therefore, the said co-delinquent was exonerated by the competent authority of the respondents. As such we are of the considered view that the aforesaid decision of the respondents would not amount to discrimination meted out to the applicant. It is further relevant to mention that that having regard to gravity of the charge proved against the applicant, the disciplinary authority after considering the facts and circumstances of the case imposed the aforesaid punishment which was affirmed by the appellate authority which had also passed a reasoned and speaking order. In ***Administrator, Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad***: (2010) 5 SCC 775, (there was a joint inquiry conducted against the respondent and two other

delinquents and major penalty of removal from service was imposed on all of them. The appeal filed by the respondent was dismissed. The appeal filed by the other two was partly allowed and the punishment in the case of one person was modified to that of compulsory retirement whereas in case of other person it was modified to reduction of lower stage of pay by 05 stages with cumulative effect. The OA filed by the respondent was allowed by the Tribunal holding that similarly placed persons had been treated differently and that awarding different punishments could not be sustained. The Writ Petition filed by the department having been dismissed, the matter was taken to Supreme Court) while allowing the appeal, the Hon'ble Supreme Court *inter alia* held as under:

> "13. The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make difference insofar as award of punishment is

> concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination."

12. It is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

> "The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal".

12. Having regard to the gravity of the charge levelled against the applicant, the punishment awarded by the disciplinary authority vide order dated 12.4.2012, which was affirmed by the appellate authority vide order dated 11.10.2013, is of reduction in pay with immediate effect from

Rs.17120/- to Rs.16130/- in Grade Rs.9,300-34,800/- [+4200] by two stages in the same time scale for a period of six months without cumulative effect. We are of the considered view that punishment imposed by order dated 12.4.2012 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

13. In view of the above, and for the foregoing reasons, having regard to the aforesaid observations of the Hon'ble Supreme Court in the aforesaid cases, especially in the case of ***Union of India and others vs. P. Gunasekaran*** (supra), we do not find any justifiable reason to interfere with the impugned orders. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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