

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 252 of 2017

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Pranakrushna Panda, aged about 57 years, S/o Maheswar Panda, at present working as PRT Kendriya Vidyalaya, Baripada, Lakshmiposi, Dist-Mayurbhanj, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through its Commissioner, Kendriya Vidyalaya Sangathan, Shaheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner (Admn), K.V.S.Hq, New Delhi, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 16.
3. Deputy Commissioner K.V.S., Regional Office at Pragati Vihar, Mancheswar, Bhubaneswar, Dist.- Khurda.

.....Respondents.

For the applicant : Ms.S.Mohapatra, counsel

For the respondents: Mr.H.K.Tripathy, counsel

Heard & reserved on : 12.7.2019 Order on : 27.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed by the applicant with the prayer for the following reliefs :

- (i) quash the order, dated 2.2.2018 under Annexure A/6 by concurrently holding the same as bad, illegal and not maintainable in the eye of law and thereby allow the applicant all consequential and monetary benefits;
- (ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice."

2. The applicant, while working as a Primary Teacher under the respondents, was served a charge memo and he was compulsorily retired from service w.e.f. 4.10.1999 after conclusion of the proceedings. He preferred an appeal which was rejected. Being aggrieved, he filed OA 620/2000 in which the Tribunal quashed the punishment order of compulsory retirement and remitted back the matter to the respondent authorities to start the proceeding from the stage of examination of witnesses. The respondents challenged the order before

the Hon'ble High Court in the Writ Petition, which was dismissed in 2007. Thereafter, the applicant was reinstated in service treating the period of absence from duty as deemed suspension. The Enquiry Officer conducted the fresh enquiry and came to a finding that the charges against the applicant as 'Not Proved'. But the Disciplinary Authority differed from the Enquiry Officer and passed a fresh punishment order dated 19.10.2010 (Annexure A/4), by which, the penalty of reducing to the lower stage in the time scale of pay of Primary Teacher for a period of 3 years with cumulative effect was imposed and the period of suspension of the applicant was treated as dies non.

3. The appeal was preferred by the applicant against the order dated 19.10.2010 vide appeal dated 15.1.2011 (Annexure A/5). Appellate Authority rejected the said appeal vide order dated 2.2.2018 (Annexure A/6). Being aggrieved by these orders, the applicant has challenged both the orders of punishment and order of the Appellate Authority at Annexure A/4 & A/6 respectively.

4. The grounds taken in the OA are that the punishment imposed by the Disciplinary Authority was disproportionate compared to the gravity of misconduct and it was imposed in a predetermined and preconceived manner after disagreeing with the report of the Inquiry Officer. It is stated that the Disciplinary Authority has not assigned any reason for differing from the Inquiry Report and that the prosecution witnesses have not stated anything against the applicant during the enquiry.

5. Counter to the OA and counter to the additional affidavit filed by the applicant, have been filed by the respondents. In the counter the respondents raised the question of maintainability of the OA. It is stated that the disciplinary authority passed a reasoned order and imposed the penalty and that no illegality has been committed by the disciplinary authority. It is further stated that the appellate authority have also examined the documents and records relating to the charges and the appellate authority agreed with the decision of the disciplinary authority. In the counter, following judgments have been cited to state that the Court or Tribunal cannot interfere with the findings

of the enquiry officer and the competent authority where these are not arbitrary or perverse :

- i) Deputy Commissioner, KVS & Ors. -vs- J. Hussain [Civil Appeal No. 8948/2013]
- ii) Administrator, Union Territory of Dadra & Nagar Haveli -vs- Gulabhai M. Lad [(2010) 5 SCC 775]
- iii) Principal Secretary, Govt. of A.P. & Another -vs- M.Adinarayan [2004(7) Supreme 727]
- iv) Sri Parma Nanda -vs- State of Haryana & Others. [1989(2) SCC P/177]
- v) State Bank of India -vs- Ram Lal [2011 AIR SCW 6577] also see State of Andhra Pradesh -vs- Sree Rama Rao [SIR 1963 SC 1723]
- vi) Union of India -vs- Alok Kumar [2010 5 SCC 349]
- vii) S.R.Tewari -vs- R.K.Singh [2013 AIR SCW 3338]
- viii) Union of India -vs- P.K.Ray & Others [AIR 1968 SC 850]
- ix) Dev Dutt -vs- Union of India [AIR 2008 SC 2513]
- x) Lord Esher M.R. in Vionet -vs- Barrett [(1985) 55 L.J.QB 39]
- xi) E.P.Royappa -vs- State of Tamilnadu & Another [1974 SCC (L&S) 165]

6. Counter to the additional affidavit filed by the respondents, stated that the applicant has challenged the punishment order after a long gap of 7 year. It denied the allegation of harassment to the applicant. It is stated that the appellate authority duly considered the appeal of the applicant on the basis of representation and evidence available on record and passed the order. The additional counter has also cited the judgments as mentioned below to state that the jurisdiction of the Tribunal to interfere in the disciplinary matter or punishment is limited –

- i) S.D.Parmananda -vs- State of Haryana & Others [1989 (2) SCC 177]
- ii) KVS & Others -vs- Gouri Shankar [WP(C) No. 4400/2003 of Hon'ble Delhi High Court]
- iii) Maharishi Dayananda University -vs- Surjeet Kaur [2010 (5) Supreme 665]
- iv) Gurjeewan Garewal (Dr.) -vs- Dr. Sumitra Dash [(2005) SCC 263]
- v) State of Punjab -vs- Jagir Singh [(2004) 8 SCC 129]
- vi) E.P.Royappa -vs- State of Tamilnadu & Another [1974 SCC (L&S) 165]
- vii) P.Damodaran (Dr.) -vs- State of Kerala [1982 (1)]
- viii) Sudhir Kumar Consul -vs- Allahabad Bank [2011 (2) Supreme 185]

7. We have heard learned counsels for both the parties. In the earlier OA filed by the applicant OA No. 620/2000, the matter was remitted back by the Tribunal after quashing the order of compulsory retirement for the reason that the author of the letter/authority of the letter on behalf of the Railways should have been examined for proving the charges and his non-examination was fatal

to the proceeding against the applicant. The Inquiry Officer, conducting fresh enquiry, examined one Railway staff and his statement was recorded. After examining of the evidence, the Inquiry Officer submitted the following conclusions in his inquiry report :

"From the proceeding of the day i.e. of 10.11.2008 it is observed that no confirmatory answer was obtained from Shri Bhagwan Majhi, Commercial Supervisor (booking), S.E.Railway, Balasore & the witness regarding :

1. Booking of ticket from Balasore to Visakhapatna on 26.5.2004
2. The genuineness of the letters issue by the Chief Coaching Supervisor, S.E.Railway, Balasore on 16.6.1995 & 23.7.95.

With regard to the other points raised by the Presenting Officer i.e. non submission of the details of the journey made and exact amount of the fare, the Charged Officer's reply was that he had submitted the tickets in original. In the previous inquiry i.e. on 6.89.1997, to a reply of the Charged Officer, Shri A.P.Mishra, ex-LDC of K.V.Bondamunda has replied that "I don't remember whether tickets were submitted along with the bill. Whatever was submitted to me, I handed over the same to UDC, Shri R.L.Rajak or to I/C Principal (PGT), that I do not remember exactly."

Since in none of the cases i.e. submission of original tickets, booking of tickets from balasore to Visakhapatna on 26.5.2004 and finally the genuineness of the letters issued by the Chief Coaching Supervisor, S.E.Railway, Balasore, a concrete information is received, it is very difficult to substantiate the charges framed against Shri P.K.Panda (under suspension), KV No.1 bokaro & the Charged Officer.

Hence, the charges framed against Shri P.K.Panda, (under suspension), KV No.1 Bokaro are Not Proved."

8. On this report, the disciplinary authority disagreed with the findings of the Inquiry Officer mainly on the following reasons (as stated in the order dated 19.10.2010 (Annexure A/4) :

- (i) The evidence of Shri B.Majhi witness from Railways disclosed that there was no record available in the office and he was not sure about the signatories of the letter. But he had identified the letters dated 16.6.1995 and 23.7.1995 which were issued after verifying the records regarding sale of tickets at Balasore Railway Station on 26.5.1994 stating that no second class general/Mail/Express tickets were issued from Balasore Station to Kanyakumari on 26.4.1994. This aspect was ignored by the Inquiry Officer.
- (ii) The applicant failed to substantiate the fact that he has performed the journey on 26.5.1994 from Balasore to Vishakhapatnam and then from Vishakhapatnam to Kanyakumari.
- (iii) From the journey particulars, it is seen that the applicant reached Balasore at 9 PM availing bus service starting from Baliapal and it

is shown that he left Balasore on 26.5.1994 by train at 00.45 AM and reached Kanyakumari on 28.5.1994 at 4.10 PM. He could not have left Balasore by train at 00.45 AM on 26.5.1994, when he reached Balasore station at 9 PM on 26.5.1994.

9. Applicant's counsel has reiterated the grounds taken in the OA stating that the disagreement note of the Disciplinary Authority was not based on reason and the evidence of the witness like the Coaching Supervisor, S.E.Railway, Balasore. It is also stated that the author of the Railway letter i.e. Chief Coaching Supervisor was not examined and the Railway staff who was examined during the inquiry could not verify the signature of the author of the letter. It is also stated that entire period from 5.10.1999 to 31.8.2008 and from 1.4.2008 to 24.10.2010 have been wrongly treated as dies non, when the suspension allowance was paid to him from 1.4.2008 to 24.10.2010. Hence, the said period cannot be treated as dies non. Although direction was to start the denovo enquiry from the stage of examination of witnesses, but this was not complied with by the disciplinary authority.

10. We take note of the judgments cited by the respondents in both the counters filed in the OA to bring to our notice that the role of this Tribunal in case of disciplinary proceeding is limited to judicial review which cannot be equated with the power exercised by the appellate forum. We take note of the fact that on the earlier punishment of compulsory retirement imposed on the applicant, this Tribunal had interfered and the punishment order was set aside due to faulty inquiry. The order of the Tribunal was upheld by Hon'ble High Court. It is a settled law that for any violations of the statutory rules or the principles of natural justice, this Tribunal can interfere in a disciplinary proceeding. In addition, if the punishment imposed is found to be shockingly disproportionate than the charges proved, it will also be a valid ground to interfere in the matter.

11. In this case, the Tribunal in order dated 20.4.2004 in OA No. 620/2000 (Annexure A/1), has recorded its findings as under :

"7. Having heard learned counsel for both sides and perused the materials placed on record and the decision relied upon by the applicant, there is no iota of doubt in our mind that the author of the letter/authority of the letter of the Railway being a vital and important person ought to have been examined and non-examination of such a vital witness is fatal to the proceedings initiated against him. Had he been examined, then the allegation of the applicant with regard to non-booking of reservation from the place mentioned in the letter, etc. could have been brought to the light.

8. We, therefore, quash the order of punishment, dated 4.10.1999 (Annexure-5) and the order of rejection of his appeal dated 15.5.2000 (Annexure-7) and remit back the matter to the disciplinary/enquiry authority to start a fresh enquiry (from the stage of examination of the witnesses) and come to a conclusion according to rules/law/record."

12. After receipt of the order of the Tribunal at Annexure A/1 Disciplinary Authority referred the matter to Inquiry Officer who submitted his fresh report after completing the fresh enquiry and copy of this report is at Annexure A/4 of the OA. It is seen from the enquiry that the Railway staff who had written the letter (i.e. Chief Coaching Supervisor) could not be examined, although one Shri B.Majhi Commercial Supervisor (Booking), S.E.Railway, Balasore was examined during the fresh enquiry. Mr.Majhi gave the statement to the effect that the booking of the ticket in question on 26.5.1994 from Balasore to Vishakhapatnam could not be verified with reference to the record since these records were destroyed after a period of three years. Regarding the genuineness of the letters the reply of Sri Majhi as stated in the enquiry report was as under :

"I'm not sure. Looking at the handwriting and the signatures, I guessed that the signature may be genuine and the letter issued to him may be genuine."

13. The findings of the Inquiry Officer are as extracted in paragraph 7 of this order. The disciplinary authority issued a disagreement note disagreeing with the report of the Inquiry Officer. Then he passed the order dated 19.10.2010 and concluded that the charges against the applicant are proved in disagreement with the Inquiry report. The following punishment has been imposed :

"Now therefore, the undersigned hereby imposes penalty of reduction to lower stage in the time scale of pay of Primary Teacher of Rs.9300/- with Grade Pay Rs.34200/- (initial stage) in the (PB-2- Rs.9300-34,800 & Grade pay Rs.4200/-) upon the said Shri P.K.Panda, PRT, KV No.1, Bokaro for a period of 03 (Three) years with cumulative effect adversely affecting his pension. It is further decided that the LTC bill in question is disallowed and the entire amount shall be recovered in lumpsum and the period of suspension of the said Shri P.K.Panda, PRT shall be treated as 'Dies Non'."

14. In OA 620/2000 filed by the applicant, the Tribunal vide order dated 20.4.2004 (Annexure A/1) had observed that the author of the letter of the Railway should have been examined. In this case the author of the letter was Chief Coaching Supervisor who was not examined in the fresh inquiry. Mr.Majhi, Coaching Supervisor was examined, who stated that the records of the Railways which were destroyed as stated by him in the inquiry. Assessing the evidence, the Inquiry Officer in his report concluded that the charges were not proved. The disciplinary authority disagreed with the findings of the inquiry officer for the reasons as discussed in para 8 above. The reasoning regarding the claim of purchase of ticket, based on the statement of Mr.Majhi is at variance with the finding of the Tribunal in order dated 20.4.2004 (Annexure A/1), in which it was stated that before proving the charge of false claim regarding purchase of ticket, the author of the letter (i.e. Chief Coaching Supervisor) should have been examined. Since this was not ensured, and Mr.Majhi, Coaching Supervisor in his statement has not clearly identified the signature of the author of the letter from Railways, there is no evidence to support the conclusion of the disciplinary authority and appellate authority that the claim for purchase of ticket by the applicant was false.

15. The appeal has been filed by the applicant before the respondent No.2. The findings recorded by the appellate authority are as under :

"17. It is relevant to submit herewith that the nobody can say that the appellant is an innocent person. He is habitually offender and his integrity is doubtful and submits his grievances in double standard manner making allegation against others. He is disturbing the work place instigating the staff members against KVS administration. He does not deserve any sympathy rather warranting severe punishment keeping in view of gravity of offence.

.....

Firstly, he contended that the witnesses were not mentioned in the chargesheet and hence he was not provided an opportunity to defend his case through examination of the witnesses. Though it is true that the de novo enquiry was instituted from the stage of examination of witnesses but they were not examined during the course of the enquiry, it is also a fact that sufficient time has lapsed (more than two years) and summoning them and examining them at this stage is difficult and also inconsequential. Further, the letter issued by the Railway Authorities which forms a vital evidence for proving the charge against the appellant was confirmed by the Railway employee Mr. Majhi and it is a sufficient opportunity provided to the appellant.

Secondly, the appellant contended that Mr.Majhi did not categorically state that the letter in question is issued by his office. The letter dated 23.7.1995 issued by the Chief coaching Supervisor was identified by the Railway employee Mr.Majhi in terms of his deposition that the letter appears to be genuine is sufficient since 10 long years have lapsed and the said letter was not issued during the tenure of Mr.Majhi at the office.

Thirdly, the appellant stated that the Inquiry Officer did not prove the charge, but Disciplinary Authority chose to ignore it and imposed penalty on him. It is not necessary that the Disciplinary Authority has to agree with the Inquiry Officer and the rules permit him/her to deviate from the views of the Inquiry Officer. There is no violation of the stipulated rules in this connection. Further, the Disciplinary Authority issued a reasoned order, detailing the reasons why and how he differed with the opinion of the Inquiry Officer; hence there is no procedural flaw in this regard.

Fourthly, the contention of the appellant that the time of journey recorded by him in the TA bill as 00.45 hrs on 26.5.1994 where as it is actually in the early hours of 27.5.1994 is by oversight and the Disciplinary authority considered it as intentioned, can be agreed to. However, this view of the Disciplinary Authority, even if it is altered, does not affect his decision, since the false claim of the appellant is proved by other documents/factors.

Fifthly, the contention of the appellant that the authenticity of the letters issued by Railway authorities in 1995 is doubtful cannot be agreed to owing to the reasoning already adduced above.

This is a very old case pertaining to 1994-95 and has gone through two enquiries and several court cases. ON examination of the documents, especially the TA claim, the following facts were found:

- Ticket number is not recorded in the bill.
- Tickets were not enclosed.
- The exact amount was not mentioned.
- The break journey was not indicated.

This haphazard and careless submission of the TA Bill raises a suspicion. Further when he was issued a chargesheet in the year 1996, he never tried to defend his case by producing some evidence of his stay at Vizag or Kanyakumari, he rather tried to evade the hearings or mislead the enquiry.

Preponderance of probability is considered enough in disciplinary proceedings; in this case the intention of the appellant in attempting to commit fraud with the department is evident and this attitude is unbecoming of a teacher.

Hence, the undersigned agrees with the decision of the Disciplinary Authority and confirms it decision.

....."

16. It is the settled position of law that the Tribunal has a limited scope for interfering in the disciplinary proceedings against an employee, as pointed out by the respondents in their Counter. In the case of **B.C. Chaturvedi vs. Union of India & Anr. reported in 1996 AIR 484**, Hon'ble Apex Court, while examining the scope of judicial review in disciplinary proceedings by the Tribunal, 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 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 therefrom, 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.

.....

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof."

17. In the case of **Deputy Commissioner KVS vs. J. Hussain, reported in AIR 2014 SC 766**, reiterating the position of law in this regard, it was held by Hon'ble Apex Court as under :

"When the charge proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the disciplinary required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority."

18. It is not the case of the respondents that the applicant's past conduct was questionable or he was found guilty of any misconduct in the past. Although there were irregularities and deficiencies in the LTC claim submitted by the applicant as mentioned in the order of the appellate authority and the disciplinary authority, but the charges relating to the false claim on purchase of ticket have not been established in view of the report of inquiry officer and the reasons for disagreement as recorded by the disciplinary authority. The punishment imposed consists of reduction to the lower stage of time scale for three years with cumulative effect, which will affect the applicant's pension. The punishment also includes treating the period of suspension as dies-non, which will imply that this period will not be counted as qualifying service for the purpose of pension and hence, it will also adversely affect his pension. Taking into consideration the fact that the allegation of false purchase of ticket

has not been proved in the manner directed by the Tribunal in order dated 20.4.2004 (A/1) as discussed in para 14 above, we are of the view that the punishment is shockingly disproportionate to the charges proved against the applicant during the enquiry and this Tribunal can interfere in the matter as per the ratio of the judgments of Hon'ble Apex Court discussed earlier.

19. The objection raised in the Counter about delay in filing this OA, has no merit since the appellate authority has disposed of the appeal by the order dated 2.2.2018 (Annexure A/6), which gives rise to a fresh cause of action since it is a statutory remedy which was required to be availed by the applicant before approaching the Tribunal. Hence, there is no delay in filing this OA.

20. In the circumstances, we are of the view that the punishment imposed on the applicant vide order dated 19.10.2010 in totality is shockingly disproportionate to the charges proved against him as stated in paragraph 5.2 of the OA. Taking into account the fact that the applicant has retired in the meantime and this disciplinary proceeding has prolonged since 1994-95, instead of remitting the matter back to the disciplinary authority for re-consideration, we set aside the part of the order dated 19.10.2010 (Annexure A/4) treating the applicant's period of suspension as dies-non and direct the respondents not to treat his period of suspension and deemed suspension as qualifying service for the purpose of pension and pensionary benefit to the applicant. It is clarified that other aspects of the punishment imposed as per the order dated 19.10.2010 (Annexure A/4) are not affected by this order. The applicant is entitled to consequential differential pension and pensionary benefits after treating the suspension period as qualifying service and the arrears of differential pension and pensionary benefits as well as revised pension will be sanctioned and disbursed by the respondents within four months from the date of receipt of the copy of this order.

21. The OA is allowed in part as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath