

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 342 of 2012

Present: Hon'ble Ms.Bidisha Banerjee, Judicial Member
Hon'ble Mr. P.K.Basu, Administrative Member

HARI SHANKAR PRASAD

VS

UNION OF INDIA & ORS. (E.RLY.)

For the applicant : Mr.A.K.Banerjee, counsel
Mr.P. Sanyal, counsel
Mr.S.N.Chattopadhyay, counsel

For the respondents : Mr.B.K.Roy, counsel

Order on : 30.3.16.

O R D E R

Ms.Bidisha Banerjee, J.M.

Heard ld. Counsel for the parties. This is the second journey of the applicant before this Tribunal.

2. Challenging the legality and propriety of the entire Disciplinary Proceedings including suspension order dated 20.8.04, charge sheet dated 12.11.04, Enquiry Report dated 27.1.06, order of punishment dated 8.6.06 and order of Appellate Authority dated 22.2.07, the applicant preferred OA 314/07 before this Tribunal, earlier. This Tribunal found that the entire proceeding from the stage of the appointment of the Enquiry Officer, who was a retired Railway servant was fatal, the applicant was prejudiced, principles of natural justice was violated and therefore quashed the entire proceedings except the charge sheet. The matter was remanded to the Disciplinary Authority to conduct fresh departmental proceedings on the charge sheet with an order of re-instatement of the applicant.

Such order passed by this Tribunal on 30.6.10, was assailed before the Hon'ble High Court in WPCT 75/1. The Hon'ble High Court found and held that the proceeding was "conducted lawfully", that the respondent was given

adequate opportunity to defend himself in the Enquiry Proceeding and therefore there was no scope to question the decision making process up to the stage of holding of enquiry. The matter was accordingly remanded back to the authority from the stage of submission of the Enquiry Report. The excerpts of the order passed by the Hon'ble High Court would be useful to quote with supplied emphasis for clarity:

"We are of the view that the proceeding was conducted lawfully. The respondent was given adequate opportunity to defend him in the enquiry proceeding, as would appear from the records. We do not find any scope to question the decision making process upto the stage of holding of the enquiry. Hence, we feel, interest of justice would sub-serve if we remand the matter back to the Authority from the stage of the submission of the enquiry report.

The Tribunal application thus succeeds in part. The order of the Tribunal setting aside the entire disciplinary proceeding is set aside. The proceeding upto the stage of the submission of the enquiry report is affirmed. The order of the Tribunal quashing the orders of the Disciplinary Authority and the Appellate Authority are affirmed. The matter is remanded back to the disciplinary Authority for consideration afresh upon giving adequate opportunity of hearing to the respondent delinquent. The respondent is granted liberty to submit his view as against the finding of the Enquiry Officer before the Disciplinary Authority would give personal hearing to the respondent and pass a reasoned order on the same. During this period, the respondent would be deemed to be under suspension unless and until the Disciplinary Authority passes final order in terms of this order. Whether the respondent would be entitled to back wages or subsistence allowance during the period when the Disciplinary Authority would consider the matter, is left open to be decided by the Disciplinary Authority in accordance with law."

Emboldened by the said liberty to submit his view against the finding of the Enquiry Officer, before the Disciplinary Authority, the applicant submitted his objection on 31.5.11.

On 18.10.11 the Divisional Mechanical Engineer and Disciplinary Authority by way of a speaking order passed the following order :

"I find that no relief is to be entitled against the punishment of dismissal from Railway service imposed by Disciplinary Authority and he will not get any back wages or subsistence allowance.

Thus, the case is disposed of as per Hon'ble High Court's order dated 3.5.2011 passed in WPCT-75/011."

3. On 14.12.11 the applicant preferred an appeal to the Additional DRM (O), Eastern Railway, Sealdah Division addressing him as the Disciplinary Authority. He alleged that the Railway Authorities never referred the matter/dispute to the Civil Authorities for local enquiry at the place where he was born and resided and in absence of such local enquiry the Enquiry

Proceeding stood vitiated. That apart, he alleged that Enquiry Officer failed to consider the police verification report conducted at the time of his initial appointment. He further alleged that vital documents were not furnished to him and the Enquiry Officer did not consider the evidence adduced by the DW1, DW2, DW3 and DW4 which was fatal and in breach of statutory provisions as contained in RS (D&A) Rules. Furthermore he submitted that he had to write and sign in a white paper under the threat and coercion of vigilance officials in a closed chamber.

4. The Appellate Authority, on appeal filed by the applicant against the speaking order dated 18.10.11, passed the following order :

"The undersigned after going through the entire file along with your appeal dated 14.12.11 has decided as follows :

'Disciplinary authority i.e. DMR/D&P in accordance with the Hon'ble High Court's order dated 3.5.2011 has given personal hearing to the CO on 11.8.2011, 16.8.2011 and 22.8.2011.

He has passed a speaking order dated 18.10.2011 clearly explaining the reasons for arriving at the conclusion. After going through the appeal vis-a-vis the case file, I do not find any additional input by which a different conclusion can be drawn other the conclusion arrived at by the Disciplinary Authority.

The order given by the Disciplinary Authority is just and appropriate and therefore, it is upheld."

5. The sum and substance of the allegations and the indictments against the applicant would be that he was known as Hari Shankar Prasad which name got adequately depicted in his PAN card, ration card etc. When the Railways offered an appointment in the name of "Gouri Shankar Prasad" in the year 1971 the applicant got his name changed to "Gouri Shankar Prasad" and accepted such appointment which was actually meant for his elder brother of the same name i.e. "Gauri Shankar Prasad". The said elder brother was not in requirement of the appointment since he was already appointed by that time. The applicant was therefore held guilty of impersonation having entered into Railway service adopting severe unfair means by suppressing his own identity.

6. During the course of hearing Id. Counsel for the applicant made a tenuous effort to find fault with the Enquiry Proceedings. As already enumerated supra, the Hon'ble High Court having recorded that the proceedings were "held lawfully", we are unable to venture into the correctness

of the proceedings upto the stage of enquiry report. In view of the fact that the applicant was given liberty only to submit his view against the "finding" of the Enquiry Officer, we are to restrict ourselves to the correctness of the findings of the Enquiry Officer only. The excerpts of the Enquiry Officer's report would be useful to quote :

"Sri Hari Shankar Prasad maintained his double identity. Ration card (RUD-5) & voter identity card (RUD-4) prove his real identity, whereas in the documents related to Railway Admn. (Service oriented) like pass book of E&NF, Rly. Co-op. Bank Ltd. (RUD-08), PAN Card (RUD-9) he used his elder brother's name as Gouri Shankar Prasad, He gave false declaration in RUD-7, in the Gazette of India as published on 23.3.02. In the Service Record (RUD-1) he declared himself as Gouri Shankar Prasad and in his clarification dt. 12.7.04 he admitted this fact. In RUD-2 he tried to fix up responsibility towards his father. But he (CO) declared himself as Gouri Shankar Prasad and not his father. In other word he has accepted that he is guilty. The story of CO (Hari Shankar Prasad) having the name of Gouri & his elder brother having the name of Gauri cannot be accepted. In answer to question 29 his elder brother admitted that he was not aware of this difference of name of himself & that of his step- brother. He emphatically replied on 1.9.05 during his deposition before the Inquiry Forum consisting of IO, PO, CO, DH that he never heard as such. He was relying as a Prosecution Witness (PW-II). PW-II also submitted that the CO, his step-brother had been staying with him in the Railway Quarter more than six years. So it cannot be accepted that PW-II never heard Hari Shankar as 'Gouri' called by mother of Hari Shankar and step-mother of Gauri Shankar (Third wife of their deceased father, Birjan Prasad, who expire on 8.12.1998).

The Defence Documents viz., a school transfer certificated issued on 28.12.1968 does not through any light on the actual fact as the same was used in the name of Gouri Shankar Prasad, Similarly, the certificate dated 16.8.05 issued by Mukhia of West Raj Jagadishpur, Vijoypur, Gopal Ganj is nothing but an after-thought and JOD-TOD affair of the whole episode of impersonification.

During the Mandatory General Examination of CO by IO on 5.10.05, CO also came up with his earlier story of assigning his name as Gouri, being auspicious in consultation with some Pandit. This is nothing but an after-thought, because this fact was also not clarified before the vigilance investigation earlier by him.

Conclusion :

Therefore, based on the Documents and Depositions the three charges framed against CO are to be considered substantiated."
(emphasis supplied)

We have carefully perused the findings of the Enquiry Officer. It was based on evidence and could not be termed as perverse.

7. In his objection to the Enquiry Officer's report the applicant would mainly bank upon the police verification report, which strangely enough, established the fact that he was "Gouri Shankar Prasad". The applicant has alleged that the Enquiry Officer did not consider the evidences adduced by DW1, DW2, DW3 and DW4 without elaborations as to the nature of the

depositions or the manner in which the non-consideration prejudiced him. It would be noticed that the Disciplinary Authority in his speaking order has specifically dealt with such allegations as made by the applicant in his objection and have met them successfully. Therefore the order of the Disciplinary Authority could not be faulted with.

8. Ld. Counsel for the respondents while drawing our attention to the reply would submit that the contention of the applicant that he was deprived of his RUDs was incorrect in as much as he himself under his clear signature on 12.5.05 received 11 RUDs having 25 sheets (33 pages), from the IO and in his deposition on 12.5.05 admitted the same.

9. Ld. Counsel for the applicant during the course of hearing would however, submit that the order issued by the Appellate Authority was not in conformity with Rule 22 of RS (D&A) Rules on the manner of consideration of Appeal, being as under:

“Consideration of appeal -

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:-

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and*
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-*

- (i) confirming, enhancing, reducing or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.”*

The Appellate Authority having failed to pass an order in conformity with the provisions of Rule 22 ibid Ld. Counsel would argue that the order deserved to be quashed.

10. We have considered the materials on record.

11. We have noted that the scope of judicial review of departmental action is extremely limited. In ***Registrar General, High Court of Patna -vs- Pandey Gajendra Prasad & Ors. [2012 (6) SCC 357]***. Hon'ble Apex Court has

eloquently held that the scope of Judicial Review under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. The Hon'ble Apex Court enumerated the following situations where the interference with the departmental authorities is permitted :

- (i) if such authority has held the proceedings in violation of principles of natural justice; or
- (ii) if violation of statutory regulations prescribing the mode of such enquiry is noticed; or
- (iii) if the decision of the authority is vitiated by considerations extraneous to the evidence on the merits of the case; or
- (iv) if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion;

It is trite, axiomatic and settled law that judicial review on findings of fact is possible only where the view taken is not sustainable (**Registrar General, High Court of Judicature of Madras -vs- K. MUTHUKUMARASAMY [2014 (16) SCC 555]**).

12. We have failed to decipher any materials that would suggest that the Enquiry Officer or the Disciplinary Authority have gone wrong. That apart we got a striking revelation that the applicant after entering Railway service in the name of "Gouri Shankar Prasad" once again got back to his original name i.e. "Hari Shankar Prasad" in 2002, the reason behind such action being not clear is sufficient to raise doubts about the bonafide of the applicant.

13. Therefore, in view of the discussions supra and having found no reason to interfere with the findings of Enquiry Officer or the speaking order of the Disciplinary Authority but having noticed that the Appellate authority had not passed the order in terms of Rule 22 of RS (D&A) Rules, we dispose of the OA with a direction upon the Appellate Authority to pass a reasoned and speaking order within one month from the date of communication of this order.

14. The OA is accordingly disposed of. No order is passed as to costs.

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 (P. K. BASU)
 MEMBER (A)
 in

(BIDISHA BANERJEE)
 MEMBER (J)