

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O.A. 1318 of 2014

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member

Shri Baban Prasad,
Son of Chandika Prasad,
Aged about 49 years,
Worked as Cabin Master under S.S.,
Vidyasagar Eastern Railway,
Residing at Vidyasagar,
P.O. Vidyasagar,
Dist. Jamtara, Jharkhand.

..... Applicant.

Versus

1. The Union of India,
Through General Manager,
Eastern Railway,
Fairlie Place,
Kolkata 700 001.
2. Sr. Divisional Operations Manager,
Eastern Railway Asansol,
P.O. Asansol,
Dist. Burdwan – 713302.
3. Addl. Divisional Railway Manager,
Eastern Railway, Asansol,
P.O. Asansol,
Burdwan 713301.

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the respondents : Mr. S. Banerjee, Counsel

Reserved on : 03.07.2019

Date of Order : 6.8.14.

ORDER

Per : Bidisha Banerjee, Judicial Member

Ld. Counsels were heard and materials on record were perused.

2. The applicant while serving as a Cabin Master, under the Station Master Vidyasagar, was served with a Major Penalty charge sheet on the alleged ground that Tufan Express was detained due to non granting of L/C on 28.03.2006 due to consumption of alcohol. He was removed as a measure of penalty and the order passed by Disciplinary Authority was confirmed by the Appellate Authority.

Aggrieved he has sought for the following reliefs:

"8.(i) Charges sheet dated 05.01.2007 issued by Sr. Divisional Operating Manager, Eastern Railway, Asansol, is bad in law and as such the same should be quashed.

(ii) Removal Order no. IM/SUSP/06(BP), dtd. 16.08.2007 issued by the Sr. Divisional Operating Manager / ASN, Eastern Railway, Asansol is had in law and as such the same should be quashed.

(iii) Office Order dated nil communicated under letter dated 18.11.2013 issued by the Addl. Divisional Railway Manager, Eastern Railway, Asansol, is bad in law and as such the same should be quashed.

(iv) An order do issue directing the respondents to reinstate the applicant in service and to grant the all consequential benefits."

3. The proceedings admittedly emerged from the special Report prepared by one SM/VDS' approved by the TI(M)/STN named Pinaki Singh Roy.

The report reads as under:

"SPECIAL REPORT AGAINST SHREE BABAN PRASAD,
CABIN MASTER / KEE UNDER STATION MANAGER / GDS

This is to report that Shree Baban Prasad Cabin Master/KEE had detained 07 Up on 28.08.2006 at JMT for 20 mts as he did not grant line clear to the said train JMT while on duty at KEE. He was in alcoholic condition.

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He was suspended by DOM(Coal)ASN on and from 29.08. 2006 but he did not give his attendance TI(M)/SM/VDS during this period of suspension. He used to come to Station very irregularly in alcoholic condition and abused the on duty staff as well as TI(M)/SM/VDS.

He was served with 8F-11 served by AOM (Pig)/ASN dated 22.09.2006 and did not bother to give the reply. The SF-11 was for his misbehavior with Shree S. Verms, Rlg SM who was on duty on 03.4.2006.

He also preferred an appeal for reversion of his suspension to OM(Coal)/ASN dtd. Nil. He was also request by TI(M) & SM/VDS to meet OM(Coal)/ASN Sr. DOM/ASN as well as TI(M)/STN for him to be heard.

He is absenting since the date of reporting and hence after consultation with DOM(Coal)/ASN and Sr. DOM/ASN, the undersigned requests for immediate and ditable disciplinary action against Shree Baban Prasad Cabin Master/REE so that the issue may be finalized at the earliest to overcome the (not legible) due to acute shortage of staff at KEE.

Pinaki Singh Roy,
TI(M)/STN"

4. The Special Report simply forms the Annexure III to the list of documents by which the articles of charge framed against Shri Baban Prasad was proposed be sustained but no Article of Charges / Statement of Imputation are drawn up although the Memorandum prepared under Rule 9 of RS (D&A) Rule mentions as under:

"The President/ Railway Board/ undersigned propose(s) to hold an inquiry against Shri Baban Prasad under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The substance of the imputation of mis-conduct of mis-behaviour in respect of which the inquiry as proposed to be held is set out in the enclosed statement of articles of charge (Annexure - I). A statement of the imputations of mis-conduct or mis-behaviour in support of each article of charge is enclosed (Annexure - II). A list of documents by which, and list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexures - III & IV). Further, copies of documents mentioned in the list of documents, as per Annexure - III are enclosed."

5. The sole witness as per Annexure IV of the charge memo, which forms "the list of witnesses by whom the articles of charge framed against Shri Baban Prasad Cabinman Stn/KEE (name and designation of the Railway servant) are proposed to

be sustained", is Sri B.N. Chowdhury SM / VDS, the person who prepared the report.

6. In defence note (Annexure A2) the following lacunae in the proceedings were vividly and categorically pointed out;

A) About the Charge Sheet –

The Charge sheet itself is in violation of the Rly. Board No. 1(D&A) 29 RC 6-25 dt. 20.4.60 Para 2 (I) in as much as it did not mention which rule or part of the rule was violated.

B) Violation of procedure:

- (a) The above rule directs "The correct rule under which action is proposed to be taken should be quoted in the charge sheet".
- (b) Para 2(3) of the above rule says that the charge should be specified, and the Charge should be properly worded, which is missing.
- (c) RB'S No. E (D&A) 68 RG 6-26 dt. 29.6.68 directs that the charge sheet be clear specific, and accurate.

Since the above rules were not followed, applicant alleged clear violation of Rly. Board's order in framing the charges.

(C) About the Charges, framed:

- 3.1 The Charges have been framed on the basis of the Reports of the SS/VDS & the TI(M)/STN.
- 3.2 Here also the DA ignored the clear rulings of the Rly. Board's order in as much as he appointed TI(M)/STN as Enquiry Officer who was also a reporting authority. So fair justice is apprehended to be at stake.

4. About the alleged incident:

Regarding charge No.1 ...detention to 3007 I P at JMT on 28.8.06 for 20 Mts. It has been alleged that:

1. Report against Sri Baban Prasad, C/master has been made by the SS/VDS vide his No.64/SM/VDS/06 dt 20.11/06 wherein the SS recorded some bogus incidents of different dates and TI(M) also repeated the same, viz, 3007 UP detained on 28.8.06, the report was forwarded in Nov. 06 or after 3 months. Moreover the Train detained at JMT but no report from JMT, SS/VDS took the duty at his own out of biasness.
2. Question arised about how SS/VDS came to the conclusion that Sri Baban Prasad was in alcoholic condition without his presence at KEE.

If the alcoholic condition was taken as correct, Sri Prasad should have been taken to the nearest Rly. Hospital either at MDP or at CLW, but none namely SS/VDS, SS/JMT, OR TI/STN took the trouble to do so. SS/JMT, in reply to Q 74 said that since TI/SIN came to the KEE Cabin, so the Responsibility was transferred to him.

This proved that the reasonable directives of Rly. Adm. to point out one's fault was clearly ignored by the Administration, side by side chance to defend himself, was denied to the CO.

5. The reliance upon the documents i.e. the report of SS/VDS & TI, based on which the charge has been framed, seems to be not correct.

6. Through the statements, cross examination examinations – it becomes clear that

a) The charge could not be established:

Sri A.K. Sharma, Dy. SM/JMT, in his report dt. 28.8.06 reported that 3007 UP stopped at 14.34 14.55 hrs or detained for 21 mts, but in the heading he noted, "detained for 20 mts."

Sri B.N. Chowdhury, SS/VDS reported that 3007 UP was detained at JMT for 23 mts.

The charge sheet recorded, "detained for 20 mts."

It's a matter of regret that the detention of 3007 UP could not be recorded by the officials perfectly.

(b) The cause of detention of 3007 UP was non-response of C/ Master of KEE, as stated by SS/ JMT, Q 60, Q 49 and SS/VDS Q 6 also other witnesses.

(c) Regarding alcoholic state, as per report of SS/VDS, TI and as charged vide SI 5:

This charge is bogus one because the reporting authority formed his opinion from quite a distance (of some KM), which becomes false report.

SS/MT Sri D.K. Singh went to KEE boarding on 3007 UP and soon the Train came to a stop at the Home Signal of KEE, the said signal was taken off and the Train Started (Q 50). Sri Singh further said that alcoholic smell was coming out when Sri B. Prasad was talking (Q70). Sri Prasad did not talk to him but while abusing SS/VDS & TI he felt alcoholic smell. This was absurd, as he did not mentioned the words or languages etc. If at all Sri Prasad was in alcoholic state, he should have been put off duty and taken to the Rly. Hospital at MDP of CLW, on asking he said that since TI arrived in the mean time so responsibility was transferred to TI(Q74).

SS/VDS made the report on 20.11.06 & TI/STN forwarded the report on 27.11.07 summarizing the report of SS/VDS wherein he noted about alcoholic state, but he also did not take action as per rules.

B

After detecting one in alcoholic mood, he must not be allowed to continue duty Ofcourse Sri Prasad was certified by the SS/JMT that he was not drunk (Q 74) .

Sri B.N. Chowdhury, SS/VDS, said that he came to know about alcoholic condition of Sri Baban Prasad through PA/VDS on duty, (Q 18) but PA, on duty stated that he was informed by the Sec. Cnl. That no response from KEE, never he said about alcoholic matter (Q 56), so the report of Sri Chowdhury, SS/VDS stands false and Liable to be quashed so far alcoholic.

Sri Baban Prasad accepted that he took Bendryl Syrup, which contains alcohol (Q 109):

- d. As per H.O.E.R, a staff put to 'C' roster can never be ordered to perform 16 Hrs. Duty, in the case of Sri B. Prasad, this safety rule was deliberately violated by the SS/VDS on 28.8.06 in ordering Sri Prasad to continue 16 Hrs. duty at KEE (Q 102 & (103) & (104), Sri Chowdhury SS/VDS once said that Sri Prasad performed 16 hr duty, so it was clear (not legible) due to shortage of man, Sri Prasad was asked to do 16 hrs. duty. This hard duty and ill health "made him more ill for which he became much weak and drowsy, which again forced him to relax for some time". Thereafter he worked up to 16 Hrs. without any complain. So alcoholic condition was baseless report and also motivated.
- 7. Regarding charge 2 that Despite suspension he never bothered to give his attendance to SM/VDS:

So far giving attendance while put under suspension, the Rly. Board's order should have been followed before reporting, the R.B's order is vide RB's No. E(D&A) 66 RG 6-30 of 6.10.66 directs that an employee under suspension is not required to attend to his work but cannot leave his HQ without permission. There is however no question of his giving daily attendance and marking presence and deduction from subsistence allowance cannot be made on this.

The charge is therefore void.

A question here arises that, how a suspended staff will prove that he gives his attendance if he is not allowed to sign the A/Register, as happened in the case of Sri B. Prasad, SS/VDS did not allow him to sign.

Further, that Alcoholic state also could not be established, as he was not examined by a Doctor, and in some cases he was not put off duty.

- 8. REGARDING CHARGE NO. – 3, this charge is a vague one as,

On vivid inspection of relevant seconds viz. Diary, Attendance Register, LSR, Eto. and cross examining the witness Sri S.S. Verma Rly. SM (C) 24), did not reveal such incidence on 03.04.06.

9. In regard to reply to SFI 1, the charge did not mention No. & Date of the SFI 1, hence comments on the meaningless charge cannot be met by the CO.

The charge is therefore baseless.

10. In regard to CHARGE NO. 4

The charge is a surprising one because, in Rly. every order is given in writing, but the order/advice to meet DOM(C), SrDOM & TI(M) was not given in writing. Doubt arises whether such advice was actually given in as much as the advice was communicated by the SS/VDS & P. Singha Roy TI(M), it was quite easy for TI to talk to Sri Prasad when he (TI) advised. So the charge stands falsified.

RB ~~vide~~ No.E(D&A) 59 RG 6 – 23 dt. 20.4.60 Para 2(3) mandates that the charges should be specified in the charge sheet and the charges would be properly worded, but here the previous were his charge violated and hence chargesheet liable was null and void.

7. The Inquiry was conducted by Pinaki Singh Roy who himself affirmed the special report of B.N. Chowdhury as correct. He was therefore the Judge of his own cause.

He has emphatically admitted the following in his report:

"The charge levelled apst Shri B. Pd., C.M/VDS made on the basis of spl report of SS/VDS dtd. 20.11.06.

x x x

"The following conclusions were arrived at by EO:-

- 1.a) The charges were framed by SS/VDS vide Ins. Spl Report SA/VDS/06 dtd. 20.11.06 and the charges were clear, specific and properly worded.
- b) The charges were not quoted by rules violated, as it was only Spl. Report agst. the CO.
- c) The charges made by SS/VDSW were verified to be correct by Sectional TI, as per his written report dtd. 27.11.06.

x x x

- 2.b) Regarding charged No. 1 a)

- i) 3007 up Toofan Exp. was detained for WC at JMT for 20 mls as reviled though, Q.No. 46 to 53, witness SS/JMT.
- ii) As per witnesses for SS/JMT, (not legible) JMT there was no response from RRB Cabin.
- iii) Sec. Cnl. / JAJ Bd. Was for obvious reasons not demanded during enquiry either by DH or CO woing to statement of facts revealed by the above witnesses, which were proved to satisfactory and conclusive to both.
- iv) There had been no-doubt as to the (not legible) of the witnesses referred as above.
- v) Even, Shree Santoo Mondal on duty (not legible) who had witnessed the whole episode on 28.8.06 was not called for both by ITI and CO as they had faith on witnesses of GMT Stn. (Q. No. 57).
- vi) On the basis of witness of SS/JMT it can be easily interred that Shree B. Pd. was indicated as SS/JMT was the first man to arrive at KEE cabin for opening communication a) he got fresh smell of alcohol while Shree B.Pd. was abusing SS/VDS and TI/stn, Pd, was found in a confused and puzzled state owing to the dual offence after consume alcohol and subsequently failing to give line clear to 3007 up.

The clerical errors of reporting the detention of 3007 up by Dy. SS/JMT Sree Sharma as 21 by SS/VDS as 23 mts. Can be overlooked as one to two percent error of timing is acceptable by the Rlys.

SS/MT & SS/VDS were both acquainted with the smell of alcohol as revealed through (not legible) 69 & 70

Shree B. Pd. was rightly relieved after being found unsuitable for duty by SS/MT subsequently by TI/STN and finally by his rostered relieve Shree B.D. Biswas.

KEE, being a block hut Stn. and a very remote area and without availability of Doctors CO could not be clinically examined.

Bbehaviour of the CO was not conducive to be taken to doctor x x x such (not legible) JMT, ASN, CLW or MDP. The CO was much agitated and could not be tamed to take to a doctor for medical test.

CO has accepted that he takes alcohol occasionally.

The witnesses except a few who did not work with him or deal with or deal with him has accepted he is a habitual drunker.

CO accepted about consumption of Benadryl Syrup which contains negligible amount of alcohol and is a widely known branded cough syrup admistered to infants even.

As per Q. No 106 of EO, CO was not suffering from any ailments and no evidence could be produced by CO to substantiate his illness.

Mondal, porter as reaveled by CO is a fairly obedient Rly. servant. He cooperated with CO throughout his duty hrs. on 28.8.06, he was present at the cabin too. He did not (not legible) he is not authorised to do so (Q. No. 114 to 118)."

8. The daily order sheet dated 3.3.07 records the following:

"Statement of Sri S.S. Verma ----- Questions put by DH-----

Q 24---In reply to Q 23 you stated that you picked out duty on 03.04.06, but the Attendance Register spoke that you did not perform (not legible) duty at VDS on the day in reference. Please explain?

Ans --- Yes, on recollecting it came to my memory that on 03.04.06 I worked at SI.S (1st night duty).

Questions put by EO to Sri Verma

Q 25 Are you confirmed that same misbehaviour (not legible) with Sri B. Prasad in alcoholic condition at VDS only in 1st night (not legible) some date during 2006?

Ans--- Yes, I confirmed that some incident occurred.

Q 26---Can you prove through your self maintained document that an unfortunate incident occurred with Sri B. Prasad.

Ans--- Yes, I can prove it through the station diary if it is available wherein I recorded the same incident.

Q 27---Did you allow him to operate the (not legible) then?

Ans--- No.

Q 28---What did you do as an In-Charge then?

Ans--- As I said before, I did not allow him duty.

Q 29---Was he drunked?

Ans--- Yes, he was drunked?"

9. The penalty order dated 16.8.07, which is supposed to be a speaking order demonstrating some application of mind by the Disciplinary authority, records the following:

"After considering the DA Enquiry report in respect of Major Penalty Charge Sheet No. TM/SUSP/2006 (B. P) dt 05.01.06, I have decided that you are guilty for having unauthorized absence without obtaining prior permission of Rly. Administration in violation of Para 3.1 (i),(ii) & (iii) of Rly. Service Conduct Rules, So you shall be (not legible) as a disciplinary measure and punishment will be effective from 16.08.2007 (A/N)."

The applicant is therefore penalised for an alleged offence which he is not charged with.

10. The Appellate Authority's order dated 12.08.08 is equally cryptic. It simply records the following:

" going through the case file, I found that the rule conduct on the part of the CO is very grave in nature. Detention to 3007 UP is involved. Consumption of alcohol on duty is viewed very seriously. I don't intends to change the punishment imposed in any manner. It stands good."

11. The applicant challenged the entire proceedings in O.A. 1881 of 2010 when the matter was remanded back to the appellate authority to issue a speaking order on all the legal lacunae as highlighted by the applicant in his appeal and in the O.A.

12. The Appellate Authority in his purported speaking order recorded the following:

" Speaking Order

Sub: - Appeal of Sri Baban Prasad, Ex. Cabin Master/VDS.

Ref:- 1) SF.5 No. TM/SUSP/06(BP) dtd. 05.01.2007;

2) First Appeal of Sri Baban Prasad,

3) Second Appeal dtd. 01.04.2009 of Sri Baban Prasad, Ex, Cabin Master / VDS.

Sri Baban Prasad, Ex.Cabin Master/KEE WAS ISSUED SF-5 i.e. major penalty charge sheet vide letter reference-1 above for misconduct as mentioned in article of charges of SF-5. The D.A. inquiry was conducted and Charge No. 1, 3 & 4 were established. The inquiry findings were supplied to Sri Baban Prasad. Based on inquiry report and representation of Sri Baban Prasad, the Disciplinary Authority imposed the punishment of removal from service with immediate effect.

Sri Baban Prasad submitted an appeal to ADRM, the Appellate Authority vide letter dtd. 13.10.07. The Appellate Authority up held the punishment. Although, Sri Baban Prasad had option to go to next higher authority as per D&A Rules of 1968, Sri Baban Prasad again submitted an appeal to ADRM vide his letter dtd. 01.04.09. Since the Appellate Authority has already passed the order, his appeal was not entertained and Sri Baban Prasad was informed accordingly. He filed a case in Hon'ble CAT/Kolkata Bench vide OA No. 1581 of 2010. The Hon'ble Court vide their order dtd. 13.09.13 directed the Appellate Authority to consider all the points made by the applicant and pass a speaking and reasoned order by giving a personal hearing to the applicant. Accordingly personal hearing was given to Sri Baban Prasad on 06.11.2013.

In Personal hearing no new points were submitted by Sri Baban Prasad therefore, his appeal dtd. 01.04.2009 is being considered by the undersigned. In the beginning of appeal he has mentioned that reporting authority cannot be Inquiry Authority. This is not fully correct, because the reporting authority was SM/VDS, Sri B.N. Choudhury and this report was forwarded by Sri P.S. Roy, TI(M)/STN. However, both the documents were relied upon document in the charge sheet. He has not quoted which rule has been violated in the case. In my opinion it is not violation of extant rule. Further, all the proceeding of imposition of major penalty has been followed in this case. Therefore, there is no denial of natural justice.

In subsequent para, he has given point wise representation. The Point-wise decision on his appeal is appended below :-

Point-I :- Sri Baban Prasad has mentioned that the detention of 3007 UP has not been reported by SM/JMT is not sufficient to prove that there was no detention to 3007 UP as other valid evidences are there and it has been established in the inquiry proceeding also. Further, he has argued that Station Superintendent cannot judge the stage of intoxication but this fact has been considered by the D.A. while passing the order in his reasoned decision that he has found him guilty of intoxication. Therefore, I don't find any biasness of this case.

Point-II:- He has tried to justify that he was not drunken but there is no document / evidence in support of his argument either. Moreover, these aspects have been deliberated in inquiry proceedings and this was sighted as reason for his in-action as Cabin Master which resulted in detention of 3007 UP and the detention was established during inquiry proceedings and the charges were established. I am convinced that 3007 UP was detained and Sri Baban is responsible for that.

Point-III:- The decision of controlling officer not to send him for medical examination and allowing him to continue his duty till the arrival of his relief does not prove his innocence because to ensure safety precautions SS/VDS was present at the station. Thus, this does not prove his innocence for detention of 3007 UP.

Point-IV:- Charged official has accepted in answer of Question No. 121 of that he take alcohol occasionally. Sri D.K. Singh SS/JMT has also mentioned in inquiry proceeding of Q.No.71 that he was intoxicated. Therefore, in my opinion evidence of intoxication is available.

Point-V:- As per Rly. Bd.'s letter quoted by him, he has to be present in HQ and to comply this, he has to attend his place of work. Thus, his argument is not valid.

Point-VI:- It is revealed during inquiry proceedings that the date of incidence has been wrongly mentioned. But the Charge No.3 is non

submission of reply to SF-11 which has been established. Therefore, I am convinced that he is guilty of charge no-3.

Point-VII:- It was in the interest of the charged official to report sick if he was not feeling well. Once he has reported on duty, he is responsible for acts & omission committed by him and his responsibility in detention of 3007 UP has been established in inquiry proceedings.

Point-VIII:- It was in the interest of the charged official to meet his superior officers to explain his point. He should have rather been pro-active in this case, therefore, his reasoning appears to be incorrect. However, not obeying the orders of superior as mentioned in the charge no. 4 has been established during inquiry proceedings and I agree with that.

Point-IX:- The Standard Form of Major Penalty Charge Sheet i.e. Standard Form No.5 has been based on Railway Board's instruction and in the first para it has been mentioned that that action is being taken against Sri B. Prasad under rule of 9 of Railway Servants Disciplinary & Appeal Rules of 1968. Therefore, his reasoning does not hold good.

In view of the above, I am convinced that the laid down rules and procedures have been followed in this case and reasonable opportunity has been granted to Sri Baban Prasad, Ex. Cabin master/VDS. I agree with the findings of inquiry, reasoning of Disciplinary Authority and hold Sri Baban Prasad guilty of the charges as mentioned in SF.5 dtd.05.01.2007. Therefore, the punishment imposed removal from service stands.

Sri Baban Prasad, Ex. Cabin Master/VDS may make an appeal to COM/Eastern Railway, the Reviewing Authority as per D&A Rule, 1968."

13. In **B.C. Chaturvedi Vs. Union of India & Ors., (1995) 6 SCC 749**, Hon'ble Apex Court held as under:

"Judicial review is not on 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 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. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal." (emphasis added)

14. Hon'ble Apex Court, in **Munna Lal –vs- UOI & Ors (2010) 15 SCC 399** where has been held as under:

"The appellant was a Sub-Inspector of Police working in the Indira International Airport, New Delhi. Disciplinary proceedings were initiated against him in the year 2005 alleging that the appellant was found in a drunken condition while on shift duty from 0700 hours to 1300 hours at the Indian Airlines Cargo gate" and the immediate superior officer of the appellant, on reaching the office, felt the smell of alcohol and suspected that the appellant must have been in a drunken condition. The Assistant Commandant ordered to take the appellant to the airport dispensary for medical check-up. The doctor on duty examined him and stated that the appellant was conscious though incoherent in speech, his pupils were equal and normal, his pulse and BP was normal and there was an element of doubt about alcohol and suspicion of mild smell of alcohol and for confirmation he was referred to Safdarjung Hospital for further medical check-up and the appellant contended that on that day, he was ill and was taking medicines and this must have caused the smell of alcohol. An inquiry was conducted and the enquiry officer relied on the incomplete report of the doctor who examined the appellant and held that the appellant's case was a confirmed case of intoxication and reliance was also placed on the three witnesses, who were examined in the inquiry. The learned counsel for the appellant contended that there was no medical evidence to prove that the appellant was drunken on that day and he was alcoholic and he was also not taken to Safdarjung Hospital as suggested by the duty doctor on panel at the Airport. The appellant also contended that reliance could not have been placed on the oral evidence given by the witnesses and evidence was not satisfactory to prove that he was found with any alcohol and he was also not taken to Safdarjung Hospital as suggested by the first doctor. Hon'ble Apex Court held – In the absence of positive evidence, we are of the view that the charge levelled against the appellant was not proved satisfactorily. In the absence of sufficient proof, the disciplinary authority should not have imposed such penalty. Therefore, the punishment imposed was illegal and the appellant is entitled to be reinstated in service and he is entitled to get 50 % of the back wages for the period he was out of service. The respondents are directed to reinstate the appellant in service forthwith. The appellant's service during this period would be treated for other service benefits such as seniority, increment and pension.

The appeal is disposed of accordingly. No costs."

15. Further, we note that the Enquiry Officer hold a pivotal role. It is not his duty to fill in any gap in the prosecution and anyhow give a finding in favour of the prosecution. Enquiry officer must maintain his impartiality even if he be both a judge and a prosecutor. He cannot be a witness trying to prove the charged

misconduct on the weight of his own evidence in proving the case on hand. Though he is a subordinate officer to the Disciplinary Authority, he maintains his identity. He is to find truth or otherwise in the charges leveled against the charged officer by the Disciplinary Authority and not necessarily to rope in the charged officer by any means. It is therefore his duty to be free from any official or other bias. An enquiry proceeding is a serious matter and is not an empty formality. In *Rattan Lal Sharma v Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School*, 1993 (4) SLR 109 a member of the Enquiry Committee deposed against the appellant as a witness for the Management. The appellant's objection against his being on the enquiry panel was ignored. Hon'ble Apex Court quashed the proceedings on the ground that any official who has to give evidence in the enquiry or in any way associated with the disposal of proceedings of the Committee, should not be nominated as a Member of the Enquiry Committee as that violates the principles of natural justice that no man shall be a judge in his own cause.

16. In *Narinder Mohan Arya v United India Insurance Co. Ltd.* (2006) 4 SCC 713 it was recounted that

(1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (*State of Assam v Mahendra Kumar Das*, 1979 Vol.1 SCC 709).

(2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice (*Khem Chand v Union of India*, AIR 1958 SC 300 and *State of U.P. v Om Prakash Gupta*, 1969 Vol.3 SCC 775).

(3) Exercise of discretionary power involves two elements-(i) objective and (ii) subjective and existence of the exercise of an objective element is a condition

precedent for existence of the subjective element (K.L. Tripathi v SBI, 1984 Vol.1 SCC 43).

(4) It is not possible to lay down any rigid rules of the principles of natural justice, which depend on the facts, and circumstances of each case but concept of fairplay in action is the basis (Sawai Singh v State of Rajasthan, 1986 Vol.3 SCC 45).

(5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal (Export Inspection Council of India v Kalyan Kumar Mitra, 1987 Vol.2 Cal. L.J. 344).

17. Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The Writ Court is entitled to interfere with the finding of the fact of any Tribunal or authority in certain circumstances (Central Bank of India Ltd. v Prakash Chandra Jain, AIR 1969 SC 983 and Kuldeep Singh v Commr. Of Police, 1987 Supp SCC 579).

18. In the aforesaid backdrop we considered the materials on record and the rival contention. From the materials on record we would discern the following legal lacunae:

(1) The Articles of charges were not drawn up, no rule was alleged to be violated, yet the applicant was found guilty and punished with a gravest punishment of removal from service.

(2) A report formed the basis of the charge. The complainant who prepared the report, himself was the sole prosecution witness who deposed against the applicant and ensured that he is penalised.

(3) The officer who approved the report forming the basis of the charge, himself conducted the enquiry as IO, whereas in terms of the decision cited supra IO should not be a witness.

The IO therefore became a judge of his own cause.

(4) The entire proceeding was conducted in a slip shod manner, inasmuch as, (a) the state of intoxication was not proved by way of medical any report. Instead it was found proved on the basis of a statement/report of complainant / prosecution witness. Therefore it became a case of no evidence.

b) The Disciplinary authority found the delinquent guilty of violating rules that he was never charged with.

c) In this manner, the principles of natural justice were given a complete go bye, while conducting the enquiry which vitiated the entire proceedings.

19. In the aforesaid back drop we have no other alternation but to quash the entire proceedings, including the chargesheet, with liberty to the respondents to act in accordance with law.

20. The applicant may be kept on suspension till such time, in case authorities desire to proceed afresh. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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