IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

WRIT PETITION No. 24705 of 2018

(RAJESH KUMAR DIXIT
Vs
UNION OF INDIA AND OTHERS)

Appearance:
(PETITIONER BY SHRI PIYUSH JAIN, ADVOCATE)
(NONE FOR THE RESPONDENTS)

Reserved on	**:**	**02nd May, 2024**
Pronounced on	**:**	**02nd July, 2024**

O R D E R

Per: S.A. Dharmadhikari, J:

This petition under Article 226 of the Constitution of India has been filed being aggrieved by the order dated 05.09.2018 passed by the Central Administrative Tribunal, Bench at Jabalpur in O.A. No.200/546/2011, whereby the learned Tribunal dismissed the original application filed by the petitioner wherein the petitioner has challenged the legality, validity and propriety of the impugned charge-sheet dated 22.12.2008 as also the entire disciplinary proceedings and the order dated 13.07.2010, whereby the punishment of removal of service to that of compulsory retirement was passed.

02. Brief facts of the case are that the petitioner was initially appointed by the Railways on 01.02.1989. After crossing several channels

of promotion, he was promoted to the post of Loco Pilot in the pay-scale of Rs.9300 – 34800 + Grade Pay of Rs.4200/- w.e.f. 27.04.1999. While holding the post of Loco Pilot Goods, Ujjain Station in Ratlam Division of Western Railways, Headquarter at Church Gate, Mumbai, the petitioner was subjected to disciplinary proceedings conducted against him and in pursuance to the major penalty, charge-sheet dated 22.12.2008 was served upon him under the provisions of Railway Servant (D & A) Rules, 1968 (hereinafter referred to as 'the Rules of 1968).

03. Prior to issuance of charge-sheet, a preliminary fact finding enquiry was conducted and a report was submitted in this regard (Annexure-P/7).

04. Learned counsel for the petitioner contended that while working on the post of Loco Pilot Goods, Grade – II, the petitioner was forcefully made to work on a Loco Engine on 02/03.11.2008, having one isolated bogie related to brake system on 23.10.2008. The engine, on which the petitioner was booked to perform his duties was at the particular time overdue for its maintenance on 30.10.2008. However, under compelling circumstances, the petitioner was compelled to operate the said loco. The petitioner in so many words had pointed out before assuming the duty to the Train Crew Controller & Chief Loco Inspector that the said engine is defective and due to poor schedule maintenance and also it is attached along with an isolated bogie related to brake system. Thus, its running would be unsafe. In spite of petitioner's request, he was compelled to perform the duty on the said Loco. The competent authority issued charge memorandum containing following charges:-

> "दिनांक 3.11.08 को लेको नं 14557 डब्ल्यूडीजी 3 पर लको पयलेट के पद पर कार्यरत थे। उज्जैन से स्टर्ट करते समय लेको के एक बेगी अईसेलेट थे यह जानते हुए भी आपने लेको का संचलन अत्यधिक स्पीड से किय तथ सुरक्षित स्पीड से लेको का संचलन करने में असफल रहे। असुरक्षित स्पीड से लेको का लपरवही युक्त संचलन करते हुए आपने एमजीजी लईन नं3 में 45 केएमपीएच की गति से प्रेश किय तथ

मंगलिय गाँव यर्ड की लाईन नं3 के अंतिम स्टाफ सिग्नल के पूर्व लेको को रोकने में विफल रहे तथ ऐड एण्ड को 30 केमरपीएच की गति से तोड़कर अग्रसर हुआ।

आपको जीएण्डएसआर नियम 2.05 (1) (2) (बी) जीआर 3.78 (1), (ए). जीआर 3.81 (1) तथ एसआर 4.11 (2) (बी) का एवं रेल सेवा अचरण नियम 1966 के पैरा 3.1 के उपनियम (11) का उल्लंघन करने का अरोपी ठहराय जात है।"

05. The main contention of learned counsel for the petitioner is that (i) the petitioner was compelled and forced to work on a loco which was due for its regular maintenance. He had pointed out to his superiors before assuming duty about the poor brake condition of the loco; (ii) the petitioner has also informed the authorities at Maksi that his loco is having poor brake power and in case of any accident, he may not be held responsible; (iii) the fact finding enquiry ought to have been conducted by three Junior Administrative Grade (JAG) officers as per Accident Manual, 1996, whereas the same has been done by the Assistant Electrical Engineer; (iv) the charge-sheet has been signed by an officer who is not the disciplinary authority of the petitioner; (v) no Presenting Officer was nominated, which is mandatory under Rule 9(iv)(c) of the Rules of 1968. Thus, the whole enquiry stands vitiated; and (vi) the petitioner was not provided relevant documents before or during the enquiry. The enquiry report has been prepared under utter violation of Rule 9(25) of the Rules of 1968.

06. Being aggrieved, the petitioner had approached the Central Administrative Tribunal by way of filing O.A. No.200/546/2011, which came to be dismissed vide impugned order dated 05.09.2018. Again being aggrieved, the present writ petition has been filed.

07. No one appeared on behalf of the respondents. However, a reply has been filed, in which following stands have been taken:-

(i) The petitioner was given full opportunity to defend himself in the DAR enquiry. Appointment of Presenting Officer is not mandatory, unless any prejudice is show by the petitioner. Relevant documents, as relevant to the enquiry, were provided to the petitioner;

(ii) The fact finding enquiry was rightly done by the Assistant electrical Engineer (Traction / Operation) as per Para – 1010 of Chapter – X of the Accident Manual;

(iii) The revision petition was correctly put up to Chief Electric Loco Engineer by Dy. CPO / HQ as per rules. Even charge-sheet has been issued by the competent authority. No procedural irregularity has been committed while conducting the enquiry and imposing the punishment.

(iv) It is settled legal position that re-appreciation of evidence is not permitted. The learned Tribunal has also considered that the punishment is not disproportionate to the misconduct committed by the petitioners.

08. On these grounds, the respondents prayed for dismissal of the writ petition.

09. Heard learned counsel for the petitioner.

10. It is well established principle of law that the scope of judicial review in departmental enquiry is very limited. The High Court can interfere with the departmental proceedings only if the proceedings were conducted contrary to the well established principle of law or the enquiry report is based on no evidence or where the competence of Authority has been challenged. None of the ingredients are present in the present case.

11. While dealing with the similar controversy as involved in this case, the Supreme Court in the case of ***Union of India & Others v/s Subrata Nath*** *reported in* ***2022 LiveLaw (SC) 998*** has held thus:-

> ….**B.C. Chaturvedi v. Union of India and Others 3**; that the High Court while exercising the powers vested in it under judicial review, ought not to have stepped into the shoes of the Appellate Authority and reappreciated the evidence to arrive at independent findings on the evidence adduced; that no grievance was raised by the respondent that the rules of natural justice had been violated or the inquiry had not been conducted in a proper manner or that the findings arrived at by the Disciplinary Authority were based on no evidence. Learned counsel asserted that in the instant case, the inquiry was conducted by a competent officer, rules of natural justice were duly complied with and the findings arrived at by the

Inquiry Officer were based on sufficient evidence. Stating that having regard to the fact that the charges against the respondent had been proved in a properly conducted departmental inquiry after giving a reasonable opportunity to the respondent to defend himself, there was no good reason for the learned Single Judge to have converted the punishment of dismissal from service imposed by the Disciplinary Authority and upheld by the Appellate Authority, to compulsory retirement and for the Division Bench to have further interfered by reassessing the evidence and directing reinstatement of the respondent in service with full back wages and only thereafter, pass a fresh order of punishment.

12. Citing the decision in **State of Orissa and Others v. Bidyabhushan Mohapatra**, it was contended that keeping in mind the gravity of the established misconduct, the Disciplinary Authority has the power to impose a punishment on the delinquent officer and such a punishment is not open for review by the High Court under Article 226 of the Constitution of India. It was also sought to be urged on behalf of the appellants that the past conduct of the respondent can be taken into consideration while awarding penalty, subject to the condition that the same is made a part of a separate charge, as was done in the instant case. In support of the said submission, learned counsel cited **Central Industrial Security Force and Others v. Abrar Ali**.

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16. In the above context, following are the observations made by a three-Judge Bench of this Court in **B.C. Chaturvedi (supra)** :

> **"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 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. 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 reappreciate 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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive 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*[6] this Court held at p. 728 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.

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18. 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 State Bank of **Bikaner and Jaipur v. Nemi Chand Nalwaya**, a two Judge Bench of this Court held as below :

"7. **It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse.** The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at

> such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India8, Union of India v. G. Ganayutham9, Bank of India v. Degala Suryanarayana10 and High Court of Judicature at Bombay v. Shashikant S. Patil11)."

18. In **Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu**, a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that :

> "**21.** Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in **Union of India and Others v. P. Gunasekaran** held thus :

> "12. **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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:
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> (a) the enquiry is held by a competent authority;
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> (b) the enquiry is held according to the procedure prescribed in that behalf;
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> (c) there is violation of the principles of natural justice in conducting the proceedings;
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> (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> (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.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

20. In **Union of India and Others v. Ex. Constable Ram Karan**, a two Judge Bench of this Court made the following pertinent observations :

"23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. *Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority*.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

21. A Constitution Bench of this Court in **State of Orissa and Others (supra)** held that if the order of dismissal is based on findings that establish the *prima facie* guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour

> is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in **Union of India v. Sardar Bahadur**.
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> 22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, *the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct*. However, in exercise of powers of judicial review, *the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in **P. Gunasekaran (supra)***. If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."
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> [Emphasis Supplied]

12. This Court in unequivocal terms comes to the conclusion that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction and this Court cannot consider itself as appellate Court. It is to be kept in mind that power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution of India. If there was an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed

and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority and that is what the Tribunal did.

13. The conclusion arrived at by the disciplinary authority was duly confirmed by the appellant authority and upheld by the revisional authority in respect of the article of charge levelled against the petitioner and the punishment imposed upon him needs no interference. Petitioner's gross negligence and dereliction in duty has resulted into accident of the Loco. Earlier also on various occasions, the petitioner was warned from time to time for the similar lapses committed by him. In such a situation, desirability of the petitioner for continuing in the Railways is certainly questionable and the disciplinary authority could not be expected to wear blinkers in respect of his past conduct while imposing the penalty of compulsory retirement from service.

14. The learned Tribunal has not committed any error in dismissing the original application. In view of the learned Tribunal as well as our view, the penalty of compulsory retirement imposed on the petitioner is commensurate with the gross negligence and dereliction in duty on his part. As a result, no case for interference is made out.

15. The present Writ Petition fails and is hereby dismissed. No order as to costs.

(S. A. DHARMADHIKARI)
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(GAJENDRA SINGH)
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