

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.203 of 2016

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Rajnish Kumar Prem S/o Late Tribeni Prasad, Village & P.O.- Kajrali, District-
Bhagalpur

..... Petitioner/s

Versus

1. The Union of India, through the General Manager, South Eastern Railway,
Garden Reach, Kolkata
2. The General Manager (P), South Eastern Railway, Garden Reach, Kolkata
3. The Sr. Divisional Personnel Officer, South Eastern Railway, Adra
4. The Divisional Personnel Officer, South Eastern Railway, Adra
5. The Asstt. Personnel Officer- 1/ Adra, South Eastern Railway, Adra

..... Respondent/s

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Appearance :

For the Petitioner : Mr. Hemant Kumar Karan, Advocate

For the Respondents : Mr. Bijoy Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 30-06-2016

Heard learned counsel for the parties.

The challenge in the present writ petition is to the order dated 22nd May, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') by which O.A. No. 12 of 2013 filed by the petitioner

has been dismissed.

The petitioner, who is an employee of the Railways, remained in unauthorized absence from duty from 12.04.2004 to 27.09.2004, for which, after serving major penalty charge memo, he was removed from service; but subsequently, after considering his mercy appeal, the punishment was modified to reduction in the lower post of Junior Clerk and he was reinstated in service on 28.09.2006, treating the intervening period as *dies non*. He again left Adra, where he was posted, without any information or leave application, for which he was asked by letter dated 03.04.2008 to resume the duty within 15 days, failing which it was indicated that action would be taken under the Railway Servants (D & A) Rules, 1968. The petitioner having failed to comply with such direction, a disciplinary proceeding was initiated against him and major penalty charge memo dated 28.06.2008 was issued. The charge having been proved, he was punished with removal from Railway service by order dated 03.03.2010. In appeal, the punishment was modified to compulsory retirement with full compensation, pension and gratuity. Such order was challenged by the petitioner in O.A. No. 413 of 2011 and the Tribunal by order dated 08.08.2012 quashed the order of the Appellate Authority and directed for fresh consideration. Pursuant to the same, the

Appellate Authority, after hearing the petitioner, passed order dated 19.10.2012, maintaining the punishment of compulsory retirement, which was impugned in O.A. No. 12 of 2013 and the order dated 22nd May, 2014 of the Tribunal in O.A. No. 12 of 2013 is the subject matter of challenge in the present writ application.

Learned counsel for the petitioner submits that the order is excessive and that in the enquiry, despite him asking for certain documents, the same were not supplied to him, which has resulted in injustice. He further contended that the Appellate Authority has power to re-appreciate the evidence but the same has not been done and further, since imposing the punishment is with the object to punishing the delinquent for proven or gross misconduct, which is not the fact in the present case. Learned counsel submits that there being valid reason for the absence of the petitioner from duty, i.e., his illness as also threat to his life, the orders passed against him are fit to be set aside.

Learned counsel for the respondents submit that the petitioner was given indulgence by the Railway when he was asked to resume his duty by letter dated 03.04.2008 and failure to do so compelled the authority to proceed against him. It is submitted that the petitioner did not submit any document about his illness and also did not indicate as to how his life was under threat at Adra. It



is further submitted the petitioner left attending to his duty at Adra without informing his superior, even though he was residing at Railway quarter at Adra itself and, thus, the plea of being ill or his life being under threat at Adra, is not genuine. It is submitted that upon the representation of the petitioner dated 20.09.2008, for sending enclosures of chargesheet, the same were sent to him under registered post on 28.11.2008. It is further submitted that on 03.12.2009 the petitioner had visited the office of the Senior Divisional Personnel Officer and expressed his unwillingness to attend further sitting of the enquiry due to personal reasons. Learned counsel submits that in the aforesaid background, after following the due procedure of law, and taking into account the fact that the charge was proved in the enquiry, the Disciplinary Authority had passed the order of removal from service which, under appeal, was altered to compulsory retirement, which was an indulgence shown by the Railway so as to enable to petitioner to avail of admissible retiral dues. Learned counsel submits that after the remand, earlier by the Tribunal, and upon hearing the petitioner, the Appellate Authority has reiterated the order of compulsory retirement, which is neither illegal nor disproportionate.

Having considered the rival contentions, we do not



find any merit in the present writ petition. The petitioner having earlier moved the Tribunal in O.A. No. 413 of 2011 against the original appellate order dated 13.10.2010, by which the penalty of removal from service was modified to compulsory retirement, and the matter having been remanded to the Appellate Authority for passing fresh orders, precludes the petitioner from raising any grievance with regard to the original enquiry as the Tribunal had not interfered with the same and had not even remanded the matter back to the Disciplinary Authority. Further, the order passed by the Appellate Authority dated 19.10.2012, pursuant to the remand, has gone into the detailed factual aspect, perusal of which does not indicate any infirmity to warrant interference. The petitioner has also not been able to demonstrate any procedural irregularity in the disciplinary proceeding. Further, the law is settled that under judicial review, the Court would not re-appraise the evidence or go into the quantum of the punishment unless it is shocking to the judicial conscious, which we do not find in the present case.

In the case of **State Bank of India v. Ramesh Dinkar Punde** reported as **(2006) 7 Supreme Court Cases 212**, it has been held to the following effect:

“ 6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view

taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.” (See Govt. of A.P. v. Mohd. Nasrullah Khan, SCC p. 379, para 11.)

7. X X X X X

8.. X X X X X

9. It is impermissible for the High Court to reappreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

10. X X X X X

11. X X X X X

12. X X X X X

13. We are, therefore, clearly of the view that the High Court has erred both in law and on facts in interfering with the findings of the inquiry officer, the disciplinary authority and the Appellate Authority by acting as a court of appeal and reappreciating the evidence.

14. X X X X X

15. In Union of India v. Sardar Bahadur it is held as under: (SCC p. 623, para 15)

A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a

reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. (SCR p. 219)

16. X X X X X

17. X X X X X

18. X X X X X

19. X X X X X

20. In Cholan Roadways Ltd. v. G. Thirugnanasambandam this Court at SCC p. 247, para 15 held:

“15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry.”

Similarly, in the case of ***Union of India v. K.G. Soni*** reported as **(2006) 6 Supreme Court Cases 794**, it has been held as under:

“12. In B.C. Chaturvedi v. Union of India it was observed: (SCC p. 762, para 18)

“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.”

13. *In Union of India v. G. Ganayutham* this Court summed up the position relating to proportionality in para 31, which read as follows: (SCC pp. 478-79)

“31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the

Wednesbury test.

(2) *The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational—in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.*

(3)(a) *As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.*

(3)(b) *If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.*

(4)(a) *The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.*

(4)(b) *Whether in the case of administrative or*

executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21, etc. are involved and not for Article 14."

(emphasis in original)

14. *The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.*

15. *To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.*

16. *The above position was recently reiterated in Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain.*

17. *The High Court has not kept the correct position in*



view. It has not even indicated as to why the punishment was considered disproportionate and why it considered the misconduct to be not serious.

18. *The impugned order of the High Court is set aside and that of the Appellate Authority, the operative part of which has been quoted above, is restored.”*

For the reasons aforesaid, no ground has been made warranting interference in the order of the Tribunal dated 22nd May, 2014 passed in O.A. No. 12 of 2013 and accordingly, the writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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