

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9799 OF 2013

Shri Mahesh Kumar Agarwal,
Age 50 years, working as
Deputy Chief Engineer (TM), Head Quarter
CSTM, residing at Quarter No.1/8,
Railway Officers' quarters, Nesbit Road,
Mazgaon, Mumbai 400 010 Petitioner

vs

- 1 Union of India, through
the Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001
- 2 General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST. Respondents

Mr. Mahesh Kumar Agarwal, petitioner present in person.

Mr. T. J. Pandian for Respondents – Union of India.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.**

CLOSED FOR JUDGMENT ON : January 28, 2016

PRONOUNCED ON : February 16, 2016

JUDGMENT (Per Anoop V. Mohta, J.):

The Petitioner has challenged judgment and order dated 19 July 2013 passed by Central Administrative Tribunal (CAT), Mumbai Bench, whereby Original Application No. 326 of 2010 was dismissed and thereby minor penalty imposed by the Respondent's Appellate Authority is maintained.

2 The Petitioner averred that, “the Petitioner was initially appointed on the post of Inspector of Works Grade-I, on 30 March 1998 and was promoted as Assistant Engineer, Group-B post on 20 November 1999 and was again promoted to the post of Executive Engineer on ad-hoc basis and the same was regularized by the UPSC. While working as Executive Engineer, on 4 July 2005, the Petitioner was charge-sheeted alleging that; the Petitioner failed to detect excess payment to contractor in that payment for sum quantity of 355500 M3 was made as against actually executed quantity of 31169.43 M3 causing loss of Rs.4.79 lacs; variation in thickness of sand layer against schedule item NS-4 (part B). Charge sheet was prepared by the Vigilance Department on 6 August 2004. The Petitioner denied

the said charges. On 24 January 2007, the Inquiry Officer submitted his report by holding the Petitioner guilty in both the charges. The said report of Inquiry Officer was given to the Petitioner after 5 months. The Petitioner submitted his representation against the said report on 29 May 2007.” As stated, the Petitioner came to know that the Inquiry Officer's report in case of Shri Kesarwani, Section Engineer, who was also issued similar charge-sheet and whose Inquiry Officer was also the same as of the Petitioner, whereby the Inquiry Officer held the Deputy Chief Engineer responsible for the second charge, whereas in his case, the Petitioner was held responsible for the same second charge. The Petitioner, on 1 June 2007 made representation to the General Manager about the arbitrary and bias findings of Inquiry Officer. The Petitioner made various representations to complete the Inquiry and pass final order. On 7 November 2008, as the final order was not passed, the Petitioner filed Application No. 544 of 2008 for early disposal of Inquiry. Accordingly, the Tribunal directed to complete the inquiry within four weeks. On 21 November 2008, DA i.e. ME (Railway Board) passed impugned order and held the Petitioner guilty in both the charges and imposed penalty of “*reduction to a lower stage in the time scale pay by*

two stages for one year, without cumulative effect (i.e. which will not affect the postponing his future increments) and not adversely affecting his pension.”. On 17 December 2008, the Petitioner preferred appeal to the President of India. As the Appeal was not decided for long period, he filed Original Application No. 225 of 2009 before the Tribunal on 22 April 2009. The Tribunal has disposed of the said Application by directing to decide within eight weeks. On 11 November 2009, the Appeal filed by the Petitioner was rejected. The Petitioner filed Original Application No. 326 of 2010 before Central Administrative Tribunal, Mumbai on 7 April 2010. The CAT, accordingly, on 19 July 2013 dismissed the Original Application and hence the present Writ Petition.

3 Heard the Petitioner in person and the learned counsel appearing for the Respondents finally. Both the parties have read and referred the pleadings, written submissions and the judgments in support of their respective contentions.

4 The submission is made by the Petitioner that the charge-sheet was not approved by the Disciplinary Authority (Railway Board)

and, therefore, the whole inquiry was illegal, is not acceptable. The decision of the Supreme Court in *Union of India v. B. V. Gopinath* (Civil Appeal No.7761 of 2013) is relied upon. The facts and circumstances of that case are totally distinct and distinguishable. In the present case, there is nothing to show that such plea was raised at any point of time by the Petitioner. Referring to the Rules, including The Railway servants (Discipline & Appeal) Rules, 1968, we have noted that General Manager was the Disciplinary Authority and the Competent Authority for the purposes of initiating the departmental proceedings and for issuance of chargesheet. Thereafter, by following due procedure, the department inquiry Officer was appointed the matter proceeded accordingly.

5 It is also observed by the CAT that the Disciplinary Authority has come to a reasonable conclusion after evaluating the material in the matter and as the punishment of only minor penalty is imposed and as there was no case of proved malafide intention and/or prejudiced or bias, dismissed the Original Application. We also see that no case is made out to interfere with the same as there is nothing illegal and/or perverse, apart from the fact that a reasonable

conclusion drawn based upon the material and imposed minor penalty as referred above. Even otherwise mere allegation of malafide or prejudice or bias itself is not sufficient unless proved with supporting material. There is no such material on record.

6 Considering the nature of penalty so recorded, the authorities below have awarded punishment of stoppage of two increments retrospectively for a period of one year without cumulative effect. The said stage, admittedly, resumed on expiry of one year along with increments meant for that particular year. [*Punjab State Electricity Board now Punjab State Power Corporation Ltd v. Raj Kumar Goel*, 2015 (3) ALL MR 436 (S.C.)]. The concept of withholding of increments without cumulative effect and withholding of increments with cumulative effect is well recognised. Two increments for a period of one year, without cumulative effect, as awarded in the present case, therefore, cannot be treated as major penalty. The same was the submission of the Respondents also. The submission is also made by the learned counsel appearing for the Respondents that this penalty will not have the effect of postponing his future increments and will not adversely affect the Petitioner's

pension and this will not affect his future promotion, if he is otherwise eligible for the same. The Petitioner, has already got promotion to the higher post pending the proceedings.

7 The Petitioner's submissions : that there was no evidence available on record to prove the charges, and the Respondents levelled false, frivolous and fabricated charges; and the Respondents issued charge-sheet which was non-est in the eyes of law; and the Honourable Railway Minister is only Competent Disciplinary Authority for the approval of major penalty charge-sheet and other related approval; and the rejection of Appeal by Appellate authority by quoting finding of charges which were not levelled on the Petitioners; and the Vigilance Department's action to implicate the Petitioner is in violation of Article 21 of the Constitution of India; and the Inquiry Officer's findings are against the principle of natural justice; and so also the order of Appellate Authority is perverse and/or bad in law, are not acceptable.

8 The Apex Court in *Union of India v. P. Gunasekaran*, AIR 2015 SC 545 and in *G. M. (Operations) S.B.I. v. R. Periyasamy*,

2014 (13) SCALE 718, reinforced the position of law that “ a finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient and/or inadequate to sustain a finding. There is no error of law which is apparent on the face of record which need to be corrected in a writ jurisdiction. The writ court is not an Appellate Authority.” The learned Members of the CAT have assessed the entire evidence and came to its conclusion which, as recorded earlier, we have also found it correct. No case is made out to interfere with the same. The learned Tribunal has given the reasons for its conclusion. There is no case to review the evidence and/or reassess the evidence and to interfere with the concurrent findings given by the Disciplinary Authority, Appellate authority and lastly by the CAT.

9 We have gone through the documents and written submissions filed by the Petitioner/Respondents and for the reasons recorded above, in our view, are sufficient to dispose of the present writ petition. Considering the totality of material including the finding so arrived at and the conclusion so drawn by providing the reasons by all the Authorities including the CAT and also considering

the scope to interfere with such findings and as there is no perversity and/or illegality and no case of ulterior motive and/or malafide proved, we are dismissing the present writ petition.

10 The Apex Court in *Prem Nath Bali v. Registrar, High Court of Delhi and anr.*¹ has reiterated the position revolving around the departmental proceedings, natural justice including the reasonable full opportunity and further held as under :

“21 We have perused the record of the departmental proceedings and find that the inquiry officer fully observed principle of natural justice while conducting the departmental proceedings. It is not in dispute that the appellant was served with detailed charge-sheet along with the documents referred to therein. He filed reply to the charge-sheet. The parties were then given full opportunity to adduce evidence and which they availed of by examining witnesses in their support and by cross-examining each of them. What more, in our opinion, is then required in any departmental proceedings? The writ court examined this issue in detail and rightly recorded the finding that the inquiry officer observed the principle of natural justice in the departmental proceedings and found no fault in the proceedings so as to entitle the court to interfere in writ jurisdiction.

22 We find no good ground to take a different view on this issue and reject this submission being devoid of any merit.”

1 AIR 2016 SC 101

11 Considering the scope of Article 226 of the Constitution of India and the fact that the learned Members of the CAT, after going through the finding given by the Disciplinary Authority, based upon the material so referred and relied upon by the respective parties, and further the reasoned decision of the Appellate Authority have given the findings that the due opportunity was given to the Petitioner to put his case and as there was no breach of principle of natural justice and rejected the Original Application, therefore, no case is made out to interfere with the impugned Judgment.

12 In the result, the writ petition is dismissed. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)