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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 04.07.2017**

% **W.P.(C) 1781/2017 and C.M. No. 7869/2017**

UNION OF INDIA AND ORS Petitioners

Through: Ms. Geetanjali Mohan, Advocate.

versus

V.P. PACHOURI Respondent

Through: Mr. M.K. Bhardwaj & Ms. Priyanka
M. Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsels for the parties at length and, with consent, proceed to dispose of the present writ petition at admission stage.

2. The Union of India has preferred the present writ petition, to assail the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.116/2013 on 29.07.2016. The petitioner also assails the order dated 13.12.2016 passed by the Tribunal in Review Application No.100/277/2016 preferred in the aforesaid Original Application, whereby the review preferred by the petitioner herein was dismissed. By the impugned order, the Original Application preferred by

the respondent V.P. Pachouri, has been allowed, and the order dated 10.09.2009 passed by the disciplinary authority; the order dated 03.03.2010 passed by the appellate authority, and; the order dated 22.04.2011 passed by the revisional authority have been set aside. The Tribunal has also exonerated the respondent of all the charges framed against him and granted him all consequential service benefits.

3. The respondent Mr. V.P. Pachouri was working as a Janitor in the Railways. He was alleged to have misconducted himself in the discharge of his duties and responsibilities. He was departmentally proceeded under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 vide memorandum of charges issued on 04.02.1997. The substance of the Articles of Charges served upon him, which has been taken note of by the Tribunal in the impugned order, reads as follows:

“Articles-I, II & III

On 3.1.1997, you were deputed by SSI (G) for inspecting the tractor while filling the mud. The completely filled tractor was inspected after passing from the main gate of Electric Loco Shed and about 1000 Kgs. of released Ferrous scrap was found. The tractor should have been filled only of mud instead of metal. You have not responsibly discharged your duties and due to your negligence, there would have been loss of Railway property”.

4. The respondent denied the charges and filed his reply to the charge-sheet. His defence in the inquiry, inter alia, was that Mr. P.S. Negi – who was the Supervisor, was the one responsible for the lapse. During the course of the departmental inquiry, the respondent was found guilty of misconduct. The finding recorded by the Inquiry Officer in his report dated 23.02.1998,

which has been extracted by the Tribunal, reads as follows:

“Finding

*SSE/G Shri P.S. Negi stated on 18.02.1998 that as per letter No.EL/95/717 (TKD) dated 10.10.1996 Janitor Shri P.S. Negi was deputed to supervise the Trolley loading by kachara regularly SSE /G also stated that Shri P.S. Negi with RPF Staff was available near Trolley also. It was looked by Shed Staff too. **Therefore, up to some extent Shri P.S. Negi is responsible due to which Rly material was shed out with kachra.***

Contractor Shri Salanki is fully responsible for pilferage at Rly material to take out with kachra in trolley. Contractor was repeatedly called to attend enquiry but he did not attend the enquiry so far.

*As per letter No.EL/95/717 (TKD) dated 10.10.1996 Shed Staff SSE/G, Janitor, RPF involved in above connivance, but (sic) physically only two persons Janitor and RPF were visible with Trolley (sic). **Therefore, Shri Ved Prakash is partly responsible**”. (emphasis supplied)*

5. After giving him due opportunity, the disciplinary authority vide its order dated 22.04.1998 inflicted the penalty of reduction in pay scale for 3 years upon the respondent. The respondent then preferred a departmental appeal before the appellate authority. The appellate authority vide its order dated 20.01.2001 after issuing show cause notice to the respondent proposing to enhance the penalty and granting him opportunity to make his representation, enhanced the punishment inflicted on the respondent by reverting him from technical Grade-I in the pay scale 4500-125-7000 to the post of technical Grade-III in the scale of 3050-75-3950-80-4590 for a period of 15 years or till he is found fit by the competent authority. It was further stated that after completion of this penalty, the respondent shall be

placed in the present post of technician Grade-I in the scale 4500-125-7000 with future effect on increments. The respondent preferred a revision before the revisional authority, which too was rejected vide order dated 11.04.2001.

6. The respondent approached the Tribunal by preferring the Original Application No.121/2009. The Tribunal examined the respondent's plea of discrimination meted out to him on the premise that the Supervisor Mr. P.S. Negi, who too had been found guilty, had not been punished. The Tribunal vide its order dated 03.07.2009, therefore, set aside the penalty imposed upon the respondent, while leaving other grounds open. The matter was remitted back to the disciplinary authority to re-consider the aspect of discrimination in the award of punishment, and the disciplinary authority was directed to pass an order in consonance with the directions issued by the Tribunal.

7. In compliance of the directions issued by the Tribunal, the disciplinary authority examined the respondent's plea of discrimination while passing its order dated 10.09.2009. The disciplinary authority did not agree with the respondent's submission regarding the alleged discrimination. The disciplinary authority, in its order dated 10.09.2009, inter alia, observed as follows:

“A perusal of entire proceedings and from the report of Enquiry Officer, all the fact and from the statement of witnesses it is proved that Shri Ved Prakash Pachouri who was posted in the General Department was looking after the Work of Janitor and was posted for filling of mud in the lorry on 03.01.1997. The employee was present in the shed on that day and from the statement of the employee it is proved that he was doing the

work of filling of mud in the lorry. When the mud filled lorry was inspected 1000 Kgs. Of iron scrap was found which should not had been there. Moreover, the negligence of Shri Ved Prakash Pachouri from his duties is evident from the fact that so much of iron scrap was found. The Railway property in such a big amount going outside the shed is a serious crime.

There is no proof of doubt to the impartiality of Enquiry Officer and all the Rules of D & AR were followed during enquiry. Shri Ved Prakash Pachouri was allowed opportunities to place his defence. Thus, in the enquiry of the employee and while considering his appeal the Railway Discipline and Appeal Rules were fully complied with.

The employee took a plea before the Hon'ble CAT that Shri P.S. Negi, SSE/G was responsible for this negligence whereas from the report of Enquiry Officer and facts it is proved that Shri P.S. Negi, was a Senior Supervisor in the General Department and Shri Ved Prakash Pachouri was discharging the duties of Janitor. Shri Ved Prakash Pachouri was posted to supervise the lifting of mud. The mud was lifted in the supervision of Shri Ved Prakash Pachouri. Therefore he is fully responsible for this negligence. As Shri Ved Prakash Pachouri was posted in General Department and for his negligence a Senior Supervisor of his department should not be held responsible.

In view of above facts and complete perusal of the record while reconsidering the case it is proved that Shri Ved Prakash Pachouri was fully responsible for this serious negligence, i.e. the iron scraps of a big quantity 1000 Kilograms was smuggled outside the shed which is a serious crime and done by him which is not appreciable to the conduct of a Railway employee and violative of para 3.1(II) and (III) of Railway Conduct Rules, 1966. The charges are serious and therefore the punishment, i.e. reverting from Technician Grade I pay scale 4500-125-7000 to Technician Grade III pay scale 3050-75-3950-80-4590 for 15 years seems to be right. Therefore, I do not find it necessary to interfere with the punishment."

8. The respondent then preferred a departmental appeal, and a further revision, which succeeded only to the extent that the punishment was successively modified. The appellate authority reduced the period of punishment from 15 to 13 years vide order dated 03.03.2010, and the revisional authority further reduced the period of penalty to 10 years vide order dated 22.04.2011.

9. Consequently, the respondent approached the Tribunal by preferring O.A. No.116/2013. The Tribunal did not find merit in the submissions of the respondent so far as the challenge to the disciplinary proceedings was concerned. In fact, the impugned order shows that the respondent also gave up the challenge to the disciplinary proceedings. The respondent, however, contended that the Supervisor Mr. P.S. Negi was equally guilty but had been let off. On this aspect, the Tribunal has found in favour of the respondent, and consequently, the Original Application has been allowed.

10. The submission of learned counsel for the petitioner, firstly, is that Mr. P.S. Negi was never chargesheeted and was not a co-delinquent, as wrongly observed by the Tribunal. She submits that the fundamental premise on which the Tribunal has proceeded is, therefore, flawed. Since Mr. P.S. Negi was never chargesheeted, it was only the allegation/ defence of the respondent, that he too was guilty of misconduct. Mr. P.S. Negi had never been given an opportunity to explain his alleged misconduct, as alleged by the respondent.

11. She further submits that after the remand of the case in the first round, the disciplinary authority has applied his mind and given his reasons for

observing that it was the respondent who was guilty of the misconduct, and Sh. P.S. Negi could not be said to have committed the misconduct. Learned counsel submits that, in any event, the respondent could not have based his claim on negative equality. It is the conduct of the respondent - which was under examination, which was found culpable, and he was liable to be punished therefor. Even if Mr. P.S. Negi had been let off lightly, despite some lapse being attributed to him, that was not a reason good enough to quash the disciplinary proceedings, or the penalty imposed upon the respondent, and to exonerate him despite his having been found guilty in a duly held departmental inquiry.

12. Learned counsel further submits that reliance placed by the Tribunal on *Man Singh Vs. State of Haryana & Others*, AIR 2008 SC 2481 was misplaced, since that case turned on a different set of facts. She submits that the decision in *Man Singh* (supra) and *Rajendra Yadav Vs. State of M.P. and Others*, 2013 (2) AISLJ 120, were not attracted, since Mr. P.S. Negi was not a co-delinquent, and his conduct was never inquired into.

13. On the other hand, the submission of Mr. Bhardwaj, learned counsel for the respondent is that in the first round, the Tribunal had only examined the aspect of discrimination meted out to the respondent vis-a-vis Mr. P.S. Negi, and all other submissions were left open.

14. He further submits that while returning the finding in the inquiry held against the respondents, the Inquiry Officer had found that Mr. P.S. Negi was also responsible to some extent for the lapse. He further submits that the Inquiry Officer found the respondent only partly responsible. He further

submits that the finding returned by the Inquiry Officer in relation to Mr.P.S. Negi was accepted by the disciplinary authority, the appellate authority and the revisional authority. The finding qua Mr. P.S. Negi was not set aside by any of these authorities. Therefore, it cannot be said that Mr. P.S. Negi was not responsible for the misconduct. Mr. Bhardwaj, therefore, submits that the respondent has been discriminated only on account of his being junior to Mr. P.S. Negi.

15. In compliance of the order passed by the Tribunal on 03.07.2009 in O.A. No.121/2009, the disciplinary authority gave its reasons as to how a case of discrimination was not made out against the respondent vis-a-vis Sh. P.S. Negi. The disciplinary authority in its order dated 10.09.2009 takes note of the following established facts:

- a) It was the respondent who was posted in the general department who was looking after the work of Janitor and was posted for filling of mud in the lorry on 03.01.1997;
- b) The respondent was present in the shed on the fateful day and he was looking after the work of filling of mud in the lorry;
- c) The mud filled lorry was inspected and 1000 kgs of iron scrap was found in the lorry, which should not have been there;
- d) The enormous amount of iron scrap of 1000 kgs in the lorry could only be a result of negligence on the part of the respondent (even if he was to be given the benefit of the doubt that he was not in collusion with the contractor, and did not

consciously allow loading of the iron scrap of such huge quantity on to the lorry);

- e) Sh. P.S. Negi, the superior of the respondent was the senior supervisor in the general department;
- f) The lifting of the mud was directly under the supervision of the respondent and, therefore, he was fully responsible for the negligence.

16. Despite the aforesaid conscious distinction being pointed out by the disciplinary authority in its order dated 10.09.2009, the Tribunal has proceeded to decide the O.A. on the basis of alleged discrimination between the respondent and Sh. P.S. Negi. The fundamental error into which the Tribunal fell was that it presumed that there was a joint departmental inquiry conducted against the respondent and Sh. P.S. Negi when, as a matter of fact, Sh. P.S. Negi was never charge sheeted and his conduct not inquired into.

17. The Tribunal has extracted and placed reliance upon the finding returned by the inquiry officer, wherein he observed that *“to some extent Sh. P.S. Negi is responsible due to which railway material was shed out with kachra”*. However, the Tribunal failed to appreciate that Sh. P.S. Negi was not charge sheeted; he never, therefore, got the opportunity to defend the allegation made against him by the respondent – and not by the department/petitioner, and; that the disciplinary authority, once again, clarified and reasserted the position while passing the reconsidered order on 10.09.2009 that it was the respondent alone who was in charge of overseeing the lifting

of the mud and loading of the same on the lorry of the contractor. The Tribunal failed to appreciate the fact that the respondent was present when the lorry was loaded and the inspection was conducted in the presence of the respondent. It was a case of the respondent being caught red handed in the act.

18. The Tribunal proceeded on a completely erroneous premise while observing that “*Sh. P.S. Negi, co-delinquent of the applicant was exonerated*”. As noticed above, there was no question of Sh. P.S. Negi being “exonerated”, when he was not even charge sheeted. Pertinently, the Tribunal does not hold that Sh. P.S. Negi should have been charge sheeted along with the respondent. If the Tribunal had to go that way, it was necessary for the Tribunal to first examine the position; apply its mind, and; return a finding that Sh. P.S. Negi was actually involved and was responsible for the misconduct along with the respondent. However, the Tribunal has not returned any finding on the aforesaid aspects. It is not that the Tribunal found, as a matter of fact, Sh. P.S. Negi was also present when the lorry was being loaded with mud under the supervision of the respondent, or that despite the loading of the lorry being undertaken under the supervision of the respondent, it was the duty of Sh. P.S. Negi to also personally check and supervise the said process of loading of the lorry with mud.

19. Reliance placed by the Tribunal on ***Man Singh*** (supra) appears to be completely misplaced, since that was a case where the State had discriminated and let off the main culprit while punishing the superior only on account of the fact that the main culprit had been exonerated in criminal

trial. It was in this background that the Supreme Court invoked the concept of equality enshrined under Article 14 of the Constitution of India. The Supreme Court in the course of its decision, inter alia, observed as follows:

“19. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.”

20. Similarly, reliance placed on ***Rajendra Yadav*** (supra) by the Tribunal is also misplaced, since that too was a case where there were more co-delinquent than one involved in the misconduct. The co-delinquent, namely, Arjun Pathak who had a more serious role in the misconduct was inflicted a comparatively lighter punishment. The appellant Rajendra Yadav, who had played a passive role, was inflicted with a more severe punishment. It was in this background that the Supreme Court invoked the concept of equality. However, as noticed above, apart from the respondent, there was no other co-delinquent involved in the misconduct in question. Thus, in our view, the Tribunal gravely erred in invoking the concept of equality as between the respondent and Sh. P.S. Negi. Sh. P.S. Negi was not in the same position as the respondent, since he was never charge sheeted because of the reason that it was the respondent alone who was responsible for, and was actually involved in the process of, loading of the lorry with mud when the illegal removal/ smuggling of a large amount of iron scrap came to light.

21. The submission of the respondent that in the first round before the Tribunal vide O.A. No.121/2009, all other grounds in relation to the departmental inquiry were left open and, therefore, they should have been gone into by the Tribunal has no merit. Firstly, the respondent has not assailed the impugned order on that ground. Secondly, the Tribunal has gone into the said aspect and negated the same by referring to the order dated 20.01.2001 passed by the appellate authority. Thirdly, the impugned order shows that the respondent “*fairly acknowledged that in view of the material on record and legal position, he would be unable to further substantiate his argument assailing the DE proceedings and the impugned*

orders on merits”.

22. In the light of the aforesaid discussion, we are of the view that the impugned order passed by the Tribunal is laconic. The same is, accordingly, set aside. The parties are left to bear their own costs.

JULY 04, 2017

B.S. Rohella/Sr

VIPIN SANGHI, J

REKHA PALLI, J



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