

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7343 OF 2004

Gajanan Nilkant Deshpande

...Petitioner

Versus

The Union of India & Ors.

...Respondents

Mr. A. S. Rao for Petitioner.

Mr. T. J. Pandian for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 07 JUNE 2018

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 26th February 2004 made by the Central Administrative Tribunal (CAT) dismissing the petitioner's Original Application No. 396 of 2003 and thereby upholding the order removing the petitioner from service.

3] The petitioner, whilst working as a Head Booking Clerk at Panvel Railway Station, was served with a charge

memorandum dated 20th November 2000 alleging that he had defrauded the railway administration in an amount of Rs.43,918/- by fabricating documents of refund without actually offering refund to the commuters. The second charge was that the petitioner, in fact, refunded an amount of Rs.800/- to one commuter but created documents to portray as if he has refunded an amount of Rs.5,925/-, thereby pocketing the difference. The third charge again relates to fraudulent documentation in matters of refund and pocketing of Rs.3,498/- by taking excess credit. The fourth charge was that the petitioner did not deliberately obtain the signatures from the passengers on the ROT statements in token of receipt of refund amounts in order to cover up his illegal dealings. The charge also states that the petitioner deliberately failed to prepare ROT statements as per the standard format thereby contravening paragraph 324(c) of IRCM VI – I.

4] Consequent upon the petitioner denying the charges levelled against him, an enquiry was held in the matter in which the enquiry officer held the charges as proved. The petitioner made a detailed representation to the disciplinary

authority objecting to the findings in the enquiry report. Upon consideration of the same, the disciplinary authority, by order dated 14th September 2001, removed the petitioner from service.

5] The petitioner instituted an appeal which was dismissed by the appellate authority by a reasoned order. The petitioner thereafter preferred a revision petition, which was also dismissed by the revisional authority on 2nd July 2002, again by passing a reasoned order. The petitioner then instituted OA No. 396 of 2003 before the CAT, which has since been dismissed by the impugned judgment and order dated 26th February 2004. Hence, the present petition.

6] Mr. A. S. Rao, the learned counsel for the petitioner submits that the enquiry proceedings stand vitiated for want of appointment of a presenting officer. He submits that in the present case the enquiry officer has himself acted as the presenting officer and even gone to the extent of examining and cross-examining witnesses. The enquiry officer failed to comply with Rule 9 (2) of the relevant rules which mandates that an enquiry officer must question the

railway servant on the circumstances appearing against him in the evidence for the purposes of enabling the railway servant to explain such circumstances. Mr. Rao submits that this provision is mandatory and non compliance with the same vitiates in the enquiry proceedings.

7] Mr. Rao submits that the complainant who is alleged to have received a refund of only Rs.800/- as against Rs.5,925/- as indicated in the documents was never examined in the course of the enquiry proceedings and such non examination deprived the petitioner opportunity to cross-examine the complainant. Mr. Rao submits that this is again violation of principles of natural justice and fair play.

8] Mr. Rao submits that in the present case the petitioner was furnished with the documents referred to in the charge memorandum only on the date of the enquiry. He submits that such documents are required to be furnished earlier so that, the petitioner has reasonable opportunity to put-forth his defence. He submits that this violation also contributes to vitiation of the enquiry proceedings.

9] Mr. Rao submits that in any case the findings recorded by the enquiry officer are perverse. He submits that there is ample material on record which indicates that the ROT statements and the tickets were mixed up at the Solapur Division and their retrieval was impossible. In the absence of the tickets and the ROT statements, there was really no material to establish that the petitioner had fabricated any documents or that the documents do not represent the actual transactions. Mr. Rao submits that even though this perversity was pointed out to the CAT, the same has been ignored by the CAT.

10] Mr. Rao submits that in the course of enquiry the petitioner had pointed out that he had properly prepared the ROT statements and the statements along with the tickets were then handed over to the Station Manager who had himself checked the veracity for onward submission to the accounts department. Mr. Rao submits that no proceedings were held against the Station Manager which establishes that the ROT statements prepared by the petitioner were legal and proper. The findings as regards misappropriation or fabrication are *ex facie* perverse, since

this important circumstance has been ignored.

11] Mr. Rao submits that on 25th June 1999 there was a major accident on the Konkan Railway track due to which, trains had to be cancelled and diverted. As a result, the station at which the petitioner was in total chaos and it is the petitioner, who had to face angry and dissatisfied commuters. The allegation as regards preparation of ROT statements or refund vouchers had to be examined in the light of the situation prevalent at the railway station. Since this has not been done the findings recorded by the enquiry officer are perverse and could not have been relied upon to impose the penalty.

12] Mr. Rao submits that for all the aforesaid reasons, the enquiry proceedings and the findings recorded by the inquiry officer deserve to be set aside. The penalty imposed on basis of such findings also deserves to be set aside.

13] Mr. Rao submits that the CAT was duty bound to re-assess the evidence before the inquiry officer since, according to Mr. Rao, the Tribunal, is '*fact finding court*'. Mr.

Rao submits that since this has not been done, the impugned judgment and order made by the CAT warrants interference.

14] Finally, Mr. Rao submits that the penalty of removal from service is grossly disproportionate and therefore the same warrants interference.

15] Mr. T. J. Pandian, the learned counsel for the respondents submits that the CAT, has addressed all the contentions raised by the petitioner in proper legal perspective. There is absolutely no jurisdictional error or any other legal infirmity in the view taken by the CAT. Therefore, Mr. Pandian submits that this petition may be dismissed.

16] Mr. Pandian points out that the rules do not mandate appointment of a presenting officer in every case. Mr. Pandian submits that no objection was raised by the petitioner in the enquiry proceedings, as regards non appointment of presenting officer. Mr. Pandian submits that no such ground was raised in the appeal or revision before

the railway authorities. Mr. Pandian submits that the record would indicate that enquiry officer has not cross-examined or posed any searching questions to the witnesses. Mr. Pandian submits that full opportunity was afforded to the petitioner and there is absolutely no violation of principles of natural justice. He submits that the petitioner has neither pleaded nor established any prejudice on account of any alleged breaches of principles of natural justice. Mr. Pandian points out that the petitioner, in the course of enquiry proceedings has himself stated that he was satisfied with the enquiry progress. For all these reasons, Mr. Pandian submits that this petition is liable to be dismissed.

17] Mr. Pandian submits that the findings recorded by the enquiry officer are backed by the evidence on record. He submits that in a matter of this nature, the non-examination of the complainant who was a commuter, cannot be said to be fatal. Mr. Pandian submits that in any case only one of the articles of the charge was based upon the complaint of the commuter. He submits that the articles of charge stand proved not only by oral evidence but also by documentary

evidence. He submits that perusal of the ROT statements, make it clear that the same were not prepared as per the prescribed format and several such statements do not even bearing the signatures of the passengers who are alleged to have received refunds. Mr. Pandian submits that even the CAT, is not an appellate authority in such matters and therefore, there is no infirmity whatsoever in the view taken by the CAT so as to warrant any interference.

18] Mr. Pandian submits that the petitioner was a Head Booking Clerk. He submits that the evidence on record establishes that the petitioner has misappropriated amounts taking advantage of the cancellation of trains and consequent order of refund of ticket amounts to the commuters. Mr. Pandian submits that there is no disproportionality so as to warrant interference with the penalty imposed upon the petitioner.

19] The rival contentions now fall for our determination.

20] The challenge to the enquiry proceedings on the grounds of alleged breach in compliance with the provisions

of natural justice and fair play have been duly addressed by the CAT and rejected for sound and cogent reasons. There is no dispute that the documents referred to in the charge memorandum were furnished to the petitioner and on the basis of the same, the petitioner, has participated in the enquiry proceedings. The mere fact that some of such documents had not been furnished along with the charge memorandum but were furnished on the date of the inquiry, is not sufficient to conclude that there has been any failure of the principles of natural justice and fair play. The petitioner, has not detailed the documents nor has the petitioner demonstrated any prejudice. There is nothing like mere technical breach of principles of natural justice and fair play. The petitioner in order to succeed on the ground that there has been violation of natural justice is to not only required to plead but also establish prejudice. The record indicates that there was no serious protest on the part of the petitioner to the alleged late furnish of documents. The record indicates that the petitioner participated in the enquiry on the basis of the documents furnished to him. Accordingly, there is no reason to fault the view taken by the CAT in the present case.

21] In terms of the rules, there is no mandate as such for appointment of a presenting officer in every case. There is nothing on record to indicate that the petitioner had protested in the course of the enquiry proceedings on the ground that there was no presenting officer appointed. Before penalty was imposed upon the petitioner, the petitioner had been furnished with the copy of the enquiry report. The petitioner made a detailed representation, in which, there was no protest on the ground that no presenting officer had been appointed at the enquiry. In the appeal as well as revision instituted by the petitioner no such ground was raised by the petitioner. On the contrary, the CAT, has transcribed questions posed by the enquiry officer to the petitioner towards the conclusion of the enquiry proceedings. One of the questions was whether the petitioner was satisfied with the enquiry progress and whether he had any objections to the conclusion of the enquiry. To this, the petitioner replied in the affirmative. In such circumstances, we are unable to uphold the petitioner's contention that the enquiry stood vitiated for want of appointment of the presenting officer.

22] From the perusal of the record, it does not appear that the enquiry officer in the present case has combined into himself the role of enquiry officer as well as the prosecutor. The questions by the enquiry officer, in the present case, cannot be described as searching questions or questions in the nature of cross-examination of the witnesses. Therefore this is not a case where the enquiry can be said to be vitiated on account of the enquiry officer himself acting as the prosecutor.

23] In every case, it is not necessary for the disciplinary authority to appoint a presenting officer. Non appointment of a presenting officer, without anything more, will not vitiate the enquiry proceedings. The enquiry officer, with a view to arrive at the truth or obtain clarifications can put questions to the prosecution or defence witnesses. In the present case, after such questions were put by the enquiry officer, full opportunity was granted to the petitioner to cross-examine the witnesses. The fact that the petitioner himself expressed satisfaction at the progress of the enquiry and the further fact that no such ground was ever

raised either during the progress of the enquiry or in the course of appeal or revision is sufficient, to reject the contention based upon alleged failure of natural justice for want of appointment of a presenting officer.

24] Mr. Rao's contention that the CAT is '*fact finding court*' cannot be expected. The CAT, in matters of this nature, exercise powers of judicial review. Therefore, unless the petitioner were to establish that the findings of fact recorded by the enquiry officer and affirmed by the appellate and revisional authorities were indeed perverse, the CAT, was not required to set such findings aside. In this case, the CAT, has looked into the record with a view to ascertain as to whether the findings recorded by the enquiry officer are indeed backed by evidence on record. This is a case where the charges against the petitioner have been proved not only on the basis of oral evidence but also documentary evidence. There is no case of perversity made out and therefore, there is no reason to interfere with the view taken by the CAT in the impugned judgment and order.

25] Only article 2 of the charge memorandum had alleged

that the petitioner granted refund of Rs.800/- to one of the passengers but indicated on the documents that he had refunded an amount of Rs.5,925/-. This passenger, had lodged a complaint and it is on basis of such complaint that article 2 of the charge came to be framed. It is true that the complainant / passenger has not been examined in the course of enquiry proceedings. It is true that this complainant was not examined in the enquiry proceedings.

26] However, in the facts and circumstances of the present case this is not fatal to the finding as regards article 2 of the charge memorandum. There is material on record that the petitioner failed to obtain the signature of this passenger on the refund statement. If the petitioner had indeed refunded a substantial amount of Rs.5,925/- to the passenger concerned, then, it is only reasonable to expect that the petitioner obtains the signature of such passenger in token of acceptance of such a large amount. Even otherwise, the rules and the prescribed procedures require that such signature is to be obtained at the stage of refund.

27] The contention that there was chaos at the railway

station and therefore, no such endorsement was obtained, cannot be accepted. Thus construed, there is really no case of perversity made out. Besides, as noted earlier, the other charges stand proved on the basis of documentary evidence on record.

28] There is also no merit in Mr. Rao's contention regards breach of rule 9(21) of the said rules. In so far as disciplinary proceedings are concerned, said rule is not construed as mandatory. In any case, the petitioner, has nowhere pleaded or established any prejudice. As held by the Hon'ble Supreme Court in the case of ***State Bank of Patiala & Ors. vs. S. K. Sharma (1996) 3 SCC 364*** procedural provisions are generally meant for affording reasonable and adequate opportunity to the delinquent employee. They are generally conceived in his interest. Therefore, violation of any and every procedural provision cannot result in vitiation of the enquiry. In case of a procedural provision which is not of a mandatory character, the complaint of violation to be examined from the standpoint of substantial compliance. The order passed in alleged violation of any such procedural provision can be

set aside but only where such violation has occasioned prejudice to the delinquent employee. The CAT has observed that even the ground as regards alleged non compliance with the procedure in Rule 9(21) of the said rules had not been taken by the petitioner in his appeal before the railway authorities. The CAT has relied upon the ruling of the Hon'ble Supreme Court in the case of ***Devkinandan Sharma vs. Union of India 2001 SCC (L&S) 1079*** to hold that a ground not raised before the Tribunal.

29] This is also not a case where the penalty imposed upon the petitioner is disproportionate or grossly disproportionate to the charge held as proved. The petitioner, was a Head Booking Clerk with the railways. The charges proved indicate misappropriation of amounts in excess of Rs.50,000/- in the year 1999-2000. Taking into consideration the post held by the petitioner and the charges which are held as proved, this is not a case where the penalty imposed can be said to be shockingly disproportionate so as to warrant any interference.

30] In ***Union of India & Ors. vs. P. Gunasekaran AIR 2015 SC 545***, the Hon'ble Supreme Court, in the context of exercise of powers under Articles 226 and 227 by the High Court in relation to disciplinary proceedings has held that the High Court is not and cannot act as a second court of first appeal. The Hon'ble Court has spelt out the restrictive parameters of jurisdiction to be exercised by a High Court in relation to disciplinary proceedings. It is held that the High Court cannot go into reliability and adequacy of evidence. Similarly, the High Court cannot re-appreciate the evidence before the enquiry officer in order to reach to a different finding. Interference is permitted only where the findings of fact is perverse. The test laid down by the Hon'ble Supreme Court, which will apply also to Central Administrative Tribunal exercising the powers of judicial review are as follows :

“(I) The High Court can only see whether:

- a). the enquiry is held by a competent authority;*
- b). the enquiry is held according to the procedure prescribed in that behalf;*
- c). there is violation of the principles of natural justice in conducting the proceedings;*
- d). the authorities have disabled themselves from reaching a fair conclusion by some considerations*

extraneous to the evidence and merits of the case;

e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

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.

II) Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate 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."

31] The CAT has applied the principles in *P. Gunasekaran* (supra) and there is really no case made out to warrant interference with the view taken by the CAT in the impugned judgment and order.

32] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA