

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14750 of 2017

-
-
1. The Union of India through General Manager East Central Railway, Hajipur, District-Vaishali, Bihar.
 2. The Chief Commercial Manager, East Central Railway, Hajipur, Vaishali, Bihar.
 3. The Divisional Railway Manager, East Central Railway, Samastipur.
 4. The Additional Divisional Railway Manager, East Central Railway, Samastipur, Bihar.
 5. The Senior Divisional Commercial Manager, East Central Railway, Samastipur.
 6. The Divisional Commercial Manager, East Central Railway, Samastipur.
 7. The Senior Divisional Personnel Officer, East Central Railway, Samastipur Bihar.

... .. Respondents/Petitioners

Versus

Narayan Prasad Rai son of late M. P. Rai, Senior Commercial Clerk, East Central Railway, Madhubani under Samastipur Divisional.

... .. Respondent

Appearance :

For the Petitioners	:	Mr.Kumar Alok, Advocate
For the Respondent	:	Mr. M. P. Dixit, Advocate
		Mr. Sanjay Kumar Dixit, Advocate
		Mr. Sanjay Kumar Chobey, Advocate
		Ms. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 20-12-2019

This writ petition under Article 226 of the
Constitution of India has been filed by the petitioners for



quashing the order dated 23.02.2017 passed in O.A. No. 142 of 2013 by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') whereby the Tribunal has set aside the order of punishment inflicted in disciplinary proceeding along with the appellate and revisional orders on the basis of penalty being shockingly disproportionate to the proved charges.

2. The facts of the case, in brief, are that while the respondent was working as Senior Commercial Clerk at Murliganj, a trap was organized by the vigilance on 13/14.02.2007 in which it was found that he was involved in obtaining excess money from passengers and not declaring the cash properly, which is violative of Rule 3.1(i), (ii) and (iii) of Railway Service (Conduct) Rules, 1966.

3. Accordingly, a departmental proceeding was initiated on 07.06.2007 wherein the following imputations of charges were drawn :

Article (i).- He demanded from the decoy passenger Rs.990/- as fare for four tickets from Murliganj to Ludhiana whereas the actual fare at the rate of Rs.234/-each ticket was Rs.936/-. Thus, he collected Rs.54/- excess from the decoy



passenger illegally.

Article (ii).- He was found having Rs.267/- short in the railway cash during his shift of duty.

Article (iii).- He had not declared Rs.10/- of his personal cash.

4. In the departmental proceeding, the respondent submitted his reply refusing the allegations. The inquiry officer having completed the inquiry found the respondent guilty of all the three charges. He submitted his detailed inquiry report on 19.02.2009. Thereafter, the respondent was given a second show-cause notice, which was replied by him.

5. Having appreciated the materials on record including the reply to the second show-cause, the Disciplinary Authority held that charge no. 1 was not established and charge nos. 2 and 3 were established. A penalty of reduction of three stages annual increment of pay with cumulative effect for the period of two years was imposed.

6. Being aggrieved by the order of punishment passed by the Disciplinary Authority, the respondent preferred an appeal before the Chief Commercial Manager, East Central Railway, Samastipur, but the same was dismissed by the



Appellate Authority vide order dated 19.01.2011.

7. The Appellate Authority while affirming the order of the Disciplinary Authority opined that the punishment imposed by the Disciplinary Authority is adequate and commensurate with the gravity of the wrong done by the respondent.

8. Thereafter, the Additional Divisional Railway Manager, East Central Railway, Samastipur being the Revisional Authority, issued a second show-cause notice dated 14.07.2011 asking the respondent as to why the order of punishment be not enhanced as the allegations levelled against him were grave and serious.

9. After receiving the show-cause reply from the respondent, the Revisional Authority revised the penalty as reduction of three stages annual increment of pay with cumulative effect for the period of four years.

10. Being aggrieved by the order passed by the Revisional Authority, the respondent filed O.A. No. 141/2013 before the Tribunal.

11. Though the Tribunal did not interfere with the finding of guilt recorded by the Disciplinary Authority, which was upheld by the Appellate Authority and the Revisional



Authority, it quashed the orders dated 17.11.2009, 19.01.2011 and 12.08.2011 passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority and directed the Revisional Authority to pass appropriate orders with regard to penalty. While quashing the aforesaid orders, the Tribunal was of the view that the penalty imposed by the authorities was far too disproportionate to the proved charges.

12. Assailing the order impugned passed by the Tribunal, Mr. Kumar Alok, learned counsel appearing for the petitioners submitted that the Tribunal has committed error in coming to the conclusion that non-declaration of personal cash and shortfall in cash counter may be due to negligence and may happen in normal course of duty by a ticket booking clerk which is trivial matter. He contended that the Tribunal failed to appreciate seriousness of the charge levelled against a railway employee engaged in collecting money for booking tickets. According to him, the order of penalty was not disproportionate to the charges proved. He contended that order of punishment was based on findings made in the domestic inquiry, which would have been subject to judicial intervention only if it was out of proportion or shocking to the conscience of Tribunal. Though the Tribunal has interfered with the order of punishment



saying that it is shockingly disproportionate to the charges, it had assigned no reason as to why the same is disproportionate to the proved charges.

13. On the other hand, Mr. M. P. Dixit, learned counsel appearing for the respondent has submitted that there is no illegality in the impugned order passed by the Tribunal whereby while setting aside the orders of punishment, the matter has been remanded back to the Revisional Authority to apply his mind again and pass appropriate orders with regard to penalty. According to him, the Tribunal has rightly observed that the proved charges were trivial in nature, as in the work of booking tickets, at the end of the day, some shortfall may happen and at the end of day, the employee would be responsible for meeting the shortfall, if any. He contended that the Tribunal has also rightly observed that non-declaration of Rs.10/- of personal cash is also a trivial matter. He contended that the Tribunal has assigned sound reasons for holding that the order of punishment is not commensurate to the charges proved against respondent. Hence, the order passed by the Tribunal warrants no interference by this Court.

14. We have considered the rival submissions and carefully perused the record.



15. There is no dispute that out of the three imputations of charges, two were proved in course of disciplinary proceeding. Neither the Appellate Authority, nor the Revisional Authority nor the Tribunal has interfered with the finding of guilt in respect of the second and the third imputation of charges. The respondent has also not challenged the finding of guilt recorded against him before this Court.

16. Thus, what is required to be looked into in the present case is that whether the Tribunal was justified in setting aside the orders of punishment passed by the Disciplinary, Appellate and Revisional Authorities while upholding the finding of guilt recorded by them and remanding the matter back to the Revisional Authority for passing a fresh order.

17. As noted, hereinabove, the matter has been remanded back to the Revisional Authority only on the ground of proportionality of punishment. True it is that the punishment must fit the crime in the disciplinary proceeding. While imposing the punishment for a proven charge, it is important that the disciplinary authorities do not overlook the importance of the principle of proportionality.

18. According to De Smith, Woolf and Jowell on



judicial review of Administrative Action [(5th Edition (1995), Sweet and Maxwell], the principle of proportionality evaluates two aspects of a decision :

- (1) Whether the relative merits or differing objectives or interests were appropriately weighed or “fairly balanced”?
- (2) Whether the measure in question was in the circumstances excessively restrictive or inflicted an unnecessary burden on affected persons?

19. The Supreme Court of India, while examining the point whether judicial review powers in administrative law permit the High Court or the Administrative Tribunals to apply the principle of proportionality referred to the leading cases in England in **Union of India & Anr. v. G. Ganayutham**, since reported in (1997) 7 SCC 463 in para 12 and 13 which reads as under :-

“The Wednesbury case (1948)

12. This case is treated as laying down various basic principles relating to judicial review of administrative or statutory discretion. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture*



Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680] (KB at p. 229: All ER p. 682). It reads as follows:

“... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word ‘unreasonable’ in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’. Similarly, there may be something so absurd that no *sensible* person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as



being done in bad faith; and in fact, all these things run into one another.”

Lord Greene also observed (KB p. 230: All ER p. 683)

“... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. *It is not what the court considers unreasonable.* ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another.”

(emphasis supplied)

Therefore, to arrive at a decision on “reasonableness” the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

The CCSU case (1985) and the expectation



of future adoption of proportionality

13. The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 All ER 935] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of *proportionality* which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

“... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘*illegality*’, the second ‘*irrationality*’ and the third ‘*procedural impropriety*’. That is not to say that further development on a *case-by-case* basis may not in course of time add further grounds. I have in mind particularly the possible adoption *in the future* of



the principle of '*proportionality*' which is recognised in the administrative law of several of our fellow members of the European Economic Community;"

Lord Diplock explained "irrationality" as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness'. It applies to a decision which is so *outrageous* in its defiance of logic or of accepted moral standards that no *sensible person* who had applied his mind to the question to be decided could have arrived at it."

(emphasis supplied)

20. According to *Wednesbury* case, while examining reasonableness of an administrative decision, the Court has to examine if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must be within the four corners of the law, and not one, which no sensible person could have reasonably arrived and must have been bona fide one. The decision could be one of many choices open to the authority. It was for that authority to decide upon the choice and not for the court to substitute its view.



21. In **G. Ganayutham** (supra) after referring to the leading cases in England and the ratio laid down by the Supreme Court in its judgment in decided cases on the question of proportionality, the Supreme Court summed up the current position of proportionality in administrative law in England and India in para 31 as under:-

“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* [(1948) 1 KB 223 : (1947) 2 All ER 680] 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* [1985 AC 374 : (1984) 3 All ER 935] principles.

(3)(a) As per *Bugdaycay* [*R. v. Ministry of Defence, ex p Smith*, (1996) 1 All ER 257], *Brind* [(1991) 1 AC 696 : (1991) 1 All ER 720] and *Smith* [*Cunliffe v. Commonwealth*, [(1994) 68 Aust LJ 791] (at 827, 839) (also 799, 810, 821), *Australian Capital Tel. Co. v. Commonwealth*, 1992 CL p. 106 (at 157) (Aus), *R. v. Oake*, 1987 Law Reports of Commonwealth 477 (at 500) (Can), *R.*



v. *Big M Drug Mart Ltd.*, (1985) 1 SCR 295 (Can)] 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.”

22. In **G. Ganayutham** (supra), a Superintendent of Central Excise was charged for certain loss of revenue to the Government due to his misconduct. The inquiry officer submitted a report stating that charge no. 4 was not proved, charge no. 8 was partly proved and other charges were proved. The respondent retired from service. A show cause notice was issued to him proposing withdrawal of full gratuity



and pension on the ground that the Government suffered substantial loss of revenue due to misconduct of the respondent. On receipt of explanation, a penalty of withholding 50% of the pension and 50% of the gratuity was awarded to the respondent. On judicial review, the Tribunal interfered with the punishment on the ground that it was too severe, as the lapses were procedural, there was no collusion between the respondent and any party, the officer had otherwise done excellent work and therefore it was a fit case where withholding of pension of 50% had to be restricted for a period of 10 years instead of on permanent basis. The Supreme Court allowed the appeal and held that only in exceptional and rare cases where the punishment imposed by the disciplinary authority shocks the conscience of the court can the court interfere with the punishment.

23. In **Bhagat Ram v. State of H. P. & Ors.**, since reported in **(1983) 2 SCC 442**, the Supreme Court observed :

“15. ...penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.”



24. In **Chairman-cum-Managing Director, Coal India Ltd. & Anr. v. Mukul Kumar Choudhuri & Ors.**, since reported in **(2009) 15 SCC 620**, the Supreme Court opined that the imposition of punishment is subject to judicial intervention if the same is exercised in a manner which is out of proportion to the fault. If the award of punishment is grossly in excess of the allegations made, it cannot claim immunity and makes itself amenable for interference under the limited scope of judicial review. The test to be applied while dealing with the question is whether a reasonable employer would have imposed such punishment in like circumstances. The question that has to be studiedly addressed is whether the punishment imposed is really arbitrary or an outrageous defiance of logic so as to be called irrational and perverse warranting interference in exercise of the power of judicial review.

25. In **State of Uttar Pradesh & Ors. v. J.P. Saraswat**, since reported in **(2011) 4 SCC 545**, the Supreme Court observed :

“8. Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the facts of the case, the punishment given to



the respondent was quite moderate and there was not even a whisper of any malice, etc. The respondent went to the USA and overstayed his leave for over a year-and-a-half on the first occasion and on the second occasion, he went to the USA without even caring to obtain leave and remained there for over four years. In those circumstances, the punishment of termination of service that would not debar from future employment was a perfectly reasonable and fair punishment and there was no occasion for the High Court to interfere with that order. The High Court was equally wrong in setting aside the punishment order passed against the respondent on the ground that the State Government had not responded to his applications for extension/grant of leave or that during the long period of his absence the Government had not sent him any notice asking to resume duties by a certain date. These could never be the grounds for the High Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions.”

26. In **State Bank of India & Anr. v. Bela Bagchi & Ors.**, since reported in (2005) 7 SCC 435, the Supreme Court observed :



“14. Respondents 1 and 2 have highlighted the alleged withdrawal of grievances of the account-holder and the absence of any loss to the Bank.

15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority -cum- Regional Manager v. Nikunja Bihari Patnaik* [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] , it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the



employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

27. In **Regional Manager, U.P. SRTC, Etawah & Ors. v. Hoti Lal & Anr.**, since reported in **(2003) 3 SCC 605**, the Supreme Court observed :

“10. ... If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal.”

28. In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**, since reported in **(2005) 3 SCC 254**, it was Rs.93/- only, which was unaccounted, the Supreme Court observed :



“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”

29. In **Karnataka State Road Transport Corporation v. B.S. Hullikatti**, since reported in **(2001) 2 SCC 574**, the Supreme Court observed :

“6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. ...”

30. The same view was reiterated by the Supreme Court in **Regional Manager, RSRTC v. Ghanshyam Sharma**, since reported in **(2002) 10 SCC 330** where it was additionally observed that the proved acts amount either to a



case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions cause financial loss to the Corporation are not fit to be retained in service.

31. Coming back to the case in hand, the Tribunal did not find any reason to interfere with the finding of guilt recorded by the respondent authorities. The inquiry was conducted following the principles of natural justice in accordance with rules and regulations. Since the power of judicial review is not akin to the powers of an appellate authority, the jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principle of natural justice.

32. It is not the case of the respondent that the punishment imposed is illegal or vitiated by procedural impropriety. There is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at. There is also no finding by the Tribunal that the punishment is outrageous defiance of logic. Thus, the Wednesbury tests are not satisfied.

33. For the aforesaid reasons, we set aside the impugned order dated 23.02.2017 passed by the Tribunal in



O.A. No.142 of 2013. The punishment awarded by the departmental authorities is restored.

34. The writ petition stands allowed.

35. In the circumstances, there shall be no order as to costs.

(Ashwani Kumar Singh, J)

Partha Sarthy, J :- I agree.

(Partha Sarthy, J)

kanchan/-

AFR/NAFR	AFR
CAV DATE	06.12.2019
Uploading Date	20.12.2019
Transmission Date	NA

