

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3539 of 2020**

- Smt. M. Venkata Laxmi, W/o Late M. Somshekhar Rao, aged about 38 years C/o Shri Papa Rao, R/o Near Shiv Satya Bhawan, Shankar Nagar, Bilaspur, District Bilaspur (CG) 495004.

---- Petitioner**Versus**

1. Union of India, Through The General Manager (G.M.), S.E.C.R., Zonal Office Building, Bilaspur (CG) 495004.
2. Divisional Railway Manager (Reviewing Authority), S.E.C.R., Office at Divisional Railway Bilaspur (CG) 495004.
3. The Divisional Operation Manager (Appellate Authority) S.E.C.R., Office at Divisional Railway Bilaspur (CG) 495004.
4. The Assistant Operation Manager (Disciplinary Authority), S.E.C.R., Office at Divisional Railway Bilaspur, (CG) 495004.

---- Respondents

For Petitioner	:	Mr. J.A. Lohani, Advocate
For Respondents	:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Per Parth Prateem Sahu, J****16/09/2020**

1. The petitioner has challenged the correctness and sustainability of the order dated 17.7.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short 'the Tribunal') in Original Application No.203/00708/2016, dismissing original application filed by petitioner.

2. The case projected by petitioner in this petition is that her late husband was removed from service after completion of disciplinary proceeding. The order of removal from service dated 29.3.2012 was challenged by her husband before the Appellate Authority by filing an appeal, which came to be dismissed on 17.9.2012. Looking to the alleged arbitrary and illegal action on the part of the respondent authorities of dismissal of appeal, the husband of petitioner committed suicide on 7.10.2012. Petitioner submitted an application before respondent No.2 for grant of compassionate appointment and compassionate allowances, which is still pending. When no action has been taken on the petitioner's application, she filed an original application before the Tribunal, which came to be dismissed by the impugned order.
3. Mr. J.A. Lohani, learned counsel representing the petitioner submits that the order of removal of petitioner's husband from service was illegal and passed without affording opportunity of hearing. He submits that claim of petitioner with regard to grant of compassionate appointment or in alternate, compassionate allowances, has also not been considered by the respondent authorities, although grant of compassionate allowance is provided under the Circular dated 27.1.2009 issued by the respondent Railways, which was not considered by the Tribunal. Lastly, he submits that after removal of her husband from service, the petitioner is facing hardships, therefore, the respondent authorities may be directed to atleast consider her

application for grant of compassionate allowance.

4. Per contra, Mr. Abhishek Sinha, learned counsel appearing on behalf of respondents submits that the Tribunal has passed the impugned order after taking into consideration various decisions of the Hon'ble Supreme Court on the issue, hence the impugned order does not call for any interference in exercise of writ jurisdiction.
5. We have heard learned counsel for both sides and perused the impugned order.
6. So far as first submission made by learned counsel for the petitioner that the order of removal of petitioner's husband from service is illegal and contrary to law is concerned, the same has been considered by the Tribunal in detail in the order impugned, taking note of the decisions of Hon'ble Supreme Court in the matters of Rajasthan Tourism Development Corporation Limited & anr Vs. Jai Raj Singh reported in (2011) 13 SCC 541; B.C. Chaturvedi Vs. Union of India reported in (1995) 6 SCC 749; Apparel Export Promotion Council Vs. A.K. Chopra reported in (1999) 1 SCC 759. Relevant part of the impugned order is extracted below for ready reference:-

“10. The Hon'ble Supreme Court in the matters of Rajasthan Tourism Development Corporation Limited & anr Vs. Jai Raj Singh reported in (2011) 13 SCC 541 : (2012) 2 SCC (L&S) 67 has considered various case law on the subject, relevant paragraphs of which are reproduced below:-

“(19).In Union of India Vs. Parma Nanda (1989) 2 SCC 177 : 1989 SCC (L&S) 303: (1989) 10 ATC

30, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

(20) In *B.C.Chaturvedi Vs. Union of India*, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 the Court reviewed some of the earlier judgements and held:

"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."

(21) In Apparel Export Promotion Council Vs. A.K. Chopra reported in (1999) 1 SCC 759 : 1999 SCC (L&S) 405, the Court again referred to the earlier judgment and observed:-

"The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court,

in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* (1982) 1 WLR 1155 : (1982) 3 All ER 141 (HL) observed:

".....The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

7. In view of above law laid down by Hon'ble Supreme Court, we do not find any illegality or infirmity in the order impugned passed by the Tribunal.
8. As regards second submission made by learned counsel for the petitioner that petitioner's application for grant of

compassionate appointment and compassionate allowance filed in view of the Circular dated 27.1.2009 (Annexure P-3) is pending consideration before respondent No.2. The Tribunal has recorded the submission made by learned counsel respondent therein that application dated 14.11.2012 (Annexure A-8) has already been replied by respondents on 1.3.2013 (Annexure A-10 & R-5).

9. Application for compassionate appointment can only be considered if an employee dies in harness. In the case at hand, after a full fledged departmental enquiry, the petitioner's husband was removed from service as a punishment and the appeal filed by petitioner's husband was also dismissed. Hence, this submission of learned counsel for the petitioner is misconceived.

10. Learned counsel for the petitioner has not placed any copy of application before this Court or annexures placed before the Tribunal. As learned counsel for the petitioner has not placed any material before this Court with regard to Para 4.3 nor the order of removal from service, no relief, as claimed for compassionate allowance, can be granted.

11. For the foregoing reasons, the writ petition being devoid of substance is liable to be dismissed and is hereby dismissed.
No order as to costs.

Sd/-
(P. Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-