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W.P.No.10169 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON: 13.12.2023**

**DELIVERED ON: 12.01.2024**

**CORAM:**

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HON'BLE TMT.JUSTICE P.DHANABAL**

**W.P.No.10169 of 2020**  
**and WMP.No.12366 of 2020**

R.Senthil Kumar

..

Petitioner

Vs.

- 1.Union of India represented by the  
Chief Personnel Office / MAS,  
Southern Railway, Head Quarters Office,  
Personnel Branch, Chennai-600 003.
  - 2.The Additional Divisional Railway Manager/MAS,  
Southern Railway, Tambaram,  
Chennai-600 045.
  - 3.The Senior Divisional Electrical Engineer/ Rolling Stock/  
Elec. TvaccRS Branch, Southern Railway,  
Tambaram, Chennai-600 045.
  - 4.The Registrar,  
Central Administrative Tribunal,  
City Civil Court Complex, IInd Floor,  
High Court Buildings, Chennai-600 104.
- .. Respondents



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**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 28.02.2020 made in OA/310/00690/2017 on the file of the 4th respondent, namely the Registrar, Central Administrative Tribunal, City Civil Court Complex, IInd Floor, High Court Buildings, Chennai-600 104, quash the same as non-est in the eye of law and consequently to allow the O.A.No.310/00690/2017 on the file of the 4th respondent herein, namely the Registrar, Central Administrative Tribunal, City Civil Court, IInd Floor, High Court Buildings, Chennai-600 104, as prayed for with costs within a time frame fixed by this Court.

For Petitioner : Mr.K.S.Govinda Prasad

For Respondents : Mr.P.R.Ramkumar,  
Standing Counsel for R1 to R3

### **ORDER**

**D.KRISHNAKUMAR, J.**

The applicant in the original application is the petitioner herein. Challenge in the writ petition is to the order of the Central Administrative Tribunal, Chenna in O.A.No.310/00690/2017 dated 28.02.2020, in and by which the Tribunal has dismissed the original application upholding the order of punishment of removal from service passed by the disciplinary authority, as confirmed by the appellate as well as revisional authority.



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2. The brief facts of the case are as follows:

2.1. The petitioner was working in Railways as Helper Grade-I.

He was initially issued with a charge memo dated 24.07.2001 for unlawful possession of railway aluminium plates valuing Rs.450/-. The petitioner submitted his explanation to the said charge memo. The first charge memo was dropped on account of administrative reasons on 27.11.2001. Subsequently, after 3 years, on the very same set of charges, a second charge memo was issued on 06.12.2004 for the contravention of the provisions of Rule 3(1)(i) and 3(1)(iii) of the Railway Services (Conduct) Rules, 1966.

2.2. Criminal prosecution was also launched on the very same set of charges, wherein after full fledged trial, the petitioner was acquitted in the criminal case on benefit of doubt in C.C.No.71 of 2002 on the file of the Judicial Magistrate, Tambaram, vide judgment dated 27.04.2007.

2.3. An Enquiry Officer was appointed and after conducting enquiry, the Enquiry Officer submitted his report holding that the charges



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framed against the petitioner has been proved. Based on the Enquiry Report, the Disciplinary Authority / third respondent, imposed the punishment of Removal from Service, vide order dated 26.02.2010. The order of punishment was confirmed by the Appellate Authority / second respondent, vide order dated 28.06.2010 and by the Revisional Authority / first respondent, vide order dated 24.01.2011.

2.4. Challenging the said orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority, the petitioner filed an Original Application in O.A.No.310/690 of 2017, on the file of the Central Administrative Tribunal, Madras Bench. The Tribunal, vide order dated 28.02.2020, has dismissed the original application, against which the present writ petition has been filed.

3. The learned counsel for the petitioner contended that on 06.12.2004, the petitioner was issued with the first charge memo dated 24.09.2001 for which he submitted his explanation dated 06.10.2004 and the said charge memo was dropped on account of administrative reasons.



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Again on 06.12.2004, the petitioner was issued with the same charge memo for the very same charges and though the said fact was brought to the notice of the Tribunal, it was not considered and therefore, the impugned order of the Tribunal is perverse. It is further contended that the Appellate Authority as well as the Revisional Authority, without any independent application of mind, has simply confirmed the order of the Disciplinary Authority by non-speaking orders and therefore, the impugned orders of the respondents as well as the order of the Tribunal are liable to be set aside.

4. *Per contra*, Mr.P.T.Ramkumar, learned counsel for the respondents / Railways would contend that during the disciplinary proceedings, inspite of several opportunities given, the petitioner failed to cooperate for the enquiry as he failed to attend many hearings and after conducting detailed enquiry by the Enquiry Officer and after careful scrutiny of the Enquiry Officer's report, the Disciplinary Authority has imposed the penalty of "Removal from Service". It is further contended that the Appellate Authority has applied his mind and passed a speaking



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order and the Tribunal has considered all these aspects and rightly dismissed the Original Application and therefore, prays for dismissal of the writ petition. The learned Standing Counsel for the respondents/Railways, in support of his contentions has placed reliance on the following decisions:

*(i) Regional Manager, UP.SRTC, Etawah and Others v. Hoti Lal and another [(2003) 3 SCC 605]*

*(ii) Union of India and Another v. Kunisetty Satyanarayana [(2006) 12 SCC 28]*

*(iii) U.P.SRTC v. Ram Kishan Arora [(2007) 4 SCC 627]*

*(iv) Lucknow K.Gramin Bank and Another v. Rajendra Singh [2013 AIR SCW 4731]*

*(v) Union of India and Ors. v. Ram Karan [AIR Online 2021 SC 1013]*

*(vi) State of Karnataka and Another v. Umesh [Civil Appeal Nos.1763 - 1764 of 2022 dated 22.03.2022]*

*(vii) Union of India and Ors. v. Const Sunil Kumar[AIR 2023 SC 554]*



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5. This Court has considered the rival submissions and also perused the materials available on record.

6. The undisputed fact remains that the petitioner was issued with the first charge memo dated 26.09.2001 for unlawful possession of 7 railway aluminium plates valuing of Rs.450/- and therefore, charges were framed for the violation of Rule 3(1)(iii) of the Railway Service (Conduct) Rules, 1966. The said charge memo was dropped on account of administrative reasons, after getting the explanation from the petitioner dated 06.10.2001. The simultaneous initiation of criminal prosecution has also ended in acquittal on the ground of benefit of doubt, vide judgment dated 27.04.2007 in C.C.No.71 of 2002 on the file of the Judicial Magistrate, Tambaram. Subsequently, a second charge memo was issued against the petitioner on the very same set of charges, after a period of 3 years i.e., on 06.12.2004. After conducting enquiry and based on the Enquiry Officer report and other materials, the Disciplinary Authority has imposed the punishment of dismissal from service. The appeal and revision filed against the same were also dismissed by the



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Appellate Authority and Revisional Authority, vide orders dated 28.06.2010 and 24.01.2011 respectively.

7. It appears that for the reasons best known, the second charge memo was issued against the petitioner on the very same set of charges during the pendency of criminal prosecution, when the earlier charge memo was dropped on account of administrative reasons. A perusal of the order of the Disciplinary Authority would disclose that the same has been passed based on the confession statement of the delinquent employee admitting his guilt. The Appellate Authority has also passed a non-speaking order by holding that the procedure laid down under Discipline and Appeal Rules have been followed and the findings of the Disciplinary Authority are based on evidence on record and simply confirmed the punishment order of the Disciplinary Authority. The Revisional Authority has also affirmed the order of the Disciplinary Authority by a non-speaking order on the ground that the petitioner has not raised any new grounds in the revision petition.



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8. In laying down the broad parameters within which the High Court ought to exercise its powers under Articles 226 & 227 of the Constitution of India and matters relating to disciplinary proceedings, the Hon'ble Supreme Court in the decision in *Union of India and Others v.*

*P. Gunasekaran [(2015) 2 SCC 610]* held thus :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. 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



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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.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate 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.” (emphasis supplied)***

9. In *Union of India and Others v. Ex. Constable Ram Karan*

*[(2022) 1 SCC 373]*, the Hon'ble Supreme Court has made the following pertinent observations :

“23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.

24. ***Even in cases where the punishment imposed by***



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*the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty.* The scope of judicial review on the quantum of punishment is available but with a limited scope. *It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon.* Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”

10. In the case on hand, admittedly the petitioner has been issued with the first charge memo on 24.07.2001 for unlawful possession of 7 aluminium plates and one Aluminium Axle Box Cover, valuing Rs.450/-, which was closed on account of administrative reasons after accepting the explanation submitted by the petitioner. However, for the very same set of charges, the second charge memo was issued after 3 years on 06.12.2004, which ended in imposition of punishment of dismissal from service. When the disciplinary authority thought fit to proceed with the second charge memo for the very same set of charges, they ought to have



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formed a opinion with valid reasons, but there is no reason assigned for issuance of the second charge memo. The Disciplinary Authority has imposed the major punishment of dismissal from service for such unlawful possession of aluminium plates valuing Rs.450/-, which in the considered opinion of this Court is shockingly disproportionate to the charges levelled against the petitioner. The order of punishment passed by the Disciplinary Authority was confirmed by the Appellate as well as Revisional Authority, by way of non-speaking orders.

11. Considering the fact that the criminal prosecution initiated against the petitioner has also ended in acquittal and taking into considering the gravity of the charge and in the light of the aforesaid decisions of the Hon'ble Supreme Court, this Court is of the view that the punishment awarded by the Disciplinary Authority is shockingly / strikingly disproportionate to the charges levelled against the petitioner and therefore, the punishment order passed by the Disciplinary Authority warrants interference and the impugned order of the Tribunal is liable to be set aside.



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12. However, in the light of the fact that the first charge memo was issued as early as on 26.09.2001 and the second charge memo was issued on 06.12.2004 and the disciplinary proceedings have concluded during the year 2011 and at this distant point of time remanding the matter to the disciplinary authority to consider afresh, in the light of the aforesaid decisions of the Hon'ble Supreme Court, will not render any useful purpose and therefore, this Court is inclined to pass the following order.

(i) The impugned order of the Tribunal dated 28.02.2020 in O.A.No.310/000690/2017 is set aside.

(ii) Consequently, the impugned order of the Disciplinary Authority / third respondent dated 26.02.2010, the impugned order of the Appellate Authority/second respondent dated 28.06.2010 and the impugned order of the Revisional Authority dated 24.01.2011 are set aside.

(iii) The petitioner is entitled to be reinstated into service without backwages and he is also entitled for notional promotion and other consequential monetary benefits, if he is otherwise eligible. The period



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of dismissal of the petitioner from service till his reinstatement shall be counted as duty period.

13. The writ petition stands allowed to the above extent. No costs.

Consequently, connected miscellaneous petition is closed.

**[D.K.K., J.,] [P.D.B., J.]**  
**12.01.2024**

Index:yes/no

Internet:yes

Jvm

To

- 1.The Chief Personnel Office / MAS,  
Union of India,  
Southern Railway, Head Quarters Office,  
Personnel Branch, Chennai-600 003.
- 2.The Additional Divisional Railway Manager/MAS,  
Southern Railway, Tambaram, Chennai-600 045.
- 3.The Senior Divisional Electrical Engineer/ Rolling Stock/  
Elec. TvaccRS Branch, Southern Railway,  
Tambaram,  
Chennai-600 045.



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**D.KRISHNAKUMAR, J.,  
&**

**P.DHANABAL, J.**

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**Order in  
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**12.01.2024**