

(2021) 05 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 189 Of 2018

B Nageswar Rao

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:

Railway Servants (Discipline & Appeal) Rules 1968 — Rule 6, 9
Railway Service (Conduct) Rule, 1966 — Rule 3.1(ii), 3.1(iii), 22

Citation : (2021) 05 CAT CK 0028

Hon'ble Judges : Jayesh V. Bhairavia, Member (J); Dr.A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : O P Khurana, R R Patel

Final Decision : Dismissed

Judgement

Jayesh V Bhairavia, Member (J)

1 The applicant while working as Loco Pilot (Goods) UDNA- Mumbai, Division, Western Railway was served with major penalty charge sheet dated

15.01.2013 S-5 under the provisions of Rule 9 of Railway Servants (Discipline & Appeal) Rules 1968 (hereinafter referred as Rules 1968) in which

the Statement of Article of Charges and Statement of Imputation reads as under:-

Annexure 1 Statement of Articles of charges framed against Shri B.Nageshwar Rao, Loco Pilot (Goods) working under CTCC-UDN:

On 30.10.2012, while signing ON duty to work Train No.59052 in NDB lobby at 2.31 hours breathalyzer test was taken by TCC on duty of Shri B

Nageshwar Rao, HQ-UDN and it was found positive with 81 mg/100 ml. Another Loco Pilot was arranged to work the train which departed 35

minutes late from the scheduled time.

He is thus charged for violating GR 2.09 and acted in a manner of unbecoming of a Railway Servant violating Rule 22 and 3.1 (ii) & (iii) of Railway

Service (Conduct) Rule, 1966.

Annexure 11 Statement of Imputations and misconduct or misbehavior in support of the articles of charge framed against Shri B Nageshwar Rao,

Loco Pilot (Goods).

On 30.10.2012, while signing ON duty to work Train No.59052 in NDB lobby at 2.31 hours breathalyzer test was taken by TCC on duty of Shri B

Nageshwar Rao, HQ-UDN and it was found positive with 81 mg/100 ml.

The printout of breathalyzer test was taken in which it confirms that Shri B Nageshwar Rao was under the influence of alcohol with 81 mg./100 ml.

Shri Rakesh Khargot, ON duty TCC and Shri Arun Indoriya ALP/NDB, present in the lobby also confirms and witnesses that Shri B Nageshwar Rao

was under the influence of alcohol with 81 mg/100 ml.

Therefore, from the above, it reveals that, on 30.10.2012, while signing ON duty to work Train No.59052 in NDB lobby at 2.31 hours breathalyzer test

was taken by TCC on duty of Shri B Nageshwar Rao HQ-UDN and it was found positive with 81 mg/100 ml.

He is thus charged for violating GR 2.09 and acted in a manner of unbecoming of a Railway Srvant violating Rule 22 and 3.1 (ii) & (iii) of Railway

Service (Conduct) Rule, 1966.

Pursuant to it, departmental inquiry was held. He participated in the said inquiry. At all stages he accepted charges imposed upon him since it was a

serious offence of reporting to duty under the influence of alcohol during Inquiry, appeal and revision petition, etc. 2 The Disciplinary Authority vide

order dated 18.11.2013 issued Notice of Imposition of Penalty (N.I.P.) under Rule 6 of Railway Rules 1968 of ""removal from service""(Annexure

A/8). The applicant had filed an appeal before the Appellate Authority which was dismissed vide order dated 09.01.2014 (Annexure A/11) and the

penalty was upheld. He filed Revision Petition dated 31.01.2014 which was also dismissed vide order dated 14.05.2014 (Annexure A/15). Aggrieved

by it he had filed OA 194/2015 along with MA 568/16 before this Tribunal. The said OA of applicant was disposed of by this Tribunal by accepting

the request of the applicant to withdraw the said OA with a liberty to approach the authority concerned by filing representation and the respondents

were directed that it would be open to the authority concerned to consider the representation of the applicant and the result of the same shall be

communicated to him. It was made clear in the said order that this Tribunal had not expressed anything about the merits or otherwise of the case as

also the manner in which the representation shall be considered (Annexure A/17).

2.1 Thereafter on 12.05.2017 (Annexure A/18), the applicant submitted his detailed representation before the Sr. Divisional Electrical Engineer (O),

DRM Office, Western Railway i.e. Respondent No.2 herein. In response to it vide letter dated 24.07.2017 (Annexure A/19), O/o respondent no.2

informed the applicant that the Mercy Petition dated 12.05.2017 by way of representation filed by him had been forwarded to the President of India.

The Mercy Petition was considered by Hon'ble President in light of the records of the Disciplinary Proceedings initiated against him vide

memorandum dated 15 . 01 . 2013 and was rejected by way of speaking order dated 16.11.2017(Annexure A/20) which is the impugned herein.

2.2 Aggrieved by the impugned order dated 16.11.2017 (Annexure A/20), whereby the Mercy Petition of the applicant was rejected and charge

memorandum dated 15.01.2013, order passed by Disciplinary Authority dated 18.11.2013, order passed by Appellate Authority dated 09.01.2014 and

order dated 14.05.2014 rejecting Revision Petition filed the present OA stood upheld, the applicant has approached this tribunal yet again.

3 Counsel for the applicant mainly submitted as under:-

(a) The authority concerned has violated the principles of natural justice enshrined under Article 311(2) of the Constitution of India by imposing very

harsh and shocking penalty of ""removal from service"" arbitrarily, and illegally because the departmental proceeding which lead to this penalty was

conducted in violation of the provisions under Rule 9 of Rules 1968 in as much as neither the vital documents were produced nor the crucial witnesses

were allowed to be examined/cross examined to establish the allegation. He was not afforded reasonable opportunity to prove his innocence.

(b) The Inquiry Officer, without establishing the alleged misconduct and without supplying the laboratory report of applicant's blood sample and the

certificate issued by Sr. Divisional Medical Officer, conducted the proceedings.

(c) The respondents had not followed the operating instructions with regard to use of alcohol breath tester. It was in clear terms mentioned therein

that the product is not intended as a test of a person's sobriety. It is not replacement or a substitute for a laboratory analysis of an individual blood

alcohol level. The Indian Railway Medical Manual (IRMM) prescribed the procedure for medical examination and certificate for drunkenness on duty.

As per the provision of Rule 566 of the said manual every case of drunkenness is a potential medico legal case and the Railway Doctor needs to be

called upon to certify such a case, who should make a careful examination and note down every important particulars. The Railway Doctor may also

have to issue drunkenness certificate to persons presented by police at places where there is no Civil Hospital or Dispensary. The respondents failed

to follow the Rule 565, 566 and 567 of IRMM (Annexure A/22).

(d) The respondent's action as to imposition of penalty of removal from service is contrary to the Directives contained in their own letter dated

27.11.2001 (Annexure A/12). The para-6 of said letter does not provide imposition of penalty of removal from service even on habitual drinkers.

(e) It is stated that the allegation as to drunkenness on duty was not factually correct and was quite vague and baselessly framed as it was neither

proved that the applicant was on duty at that time nor he was under influence of alcohol. In fact, the applicant had gone to the office of TTC with

written request that being unwell he was in need of more bed rest in the running room. Therefore, the major penalty is in violation of principles of

natural justice and the action was based on vexatious charge sheet.

(f) The Doctrine of equality has not been applied because several employees under similar circumstances were not punished at all. In this regard, the

counsel for the applicant submits that in sub para X of para 4.10 of this OA, details and names of file no. of four such employees have been stated.

However, in the case of applicant, the respondents had taken a different approach and imposed death like penalty which also violates the Doctrine of

Proportionate Penalty. As such, the applicant had not committed any heinous crime warranting such major penalty.

(g) The applicant in good faith submitted his representation before the Appellate Authority dated 15.11.2013 (Annexure A/10), wherein he explained

the difficulty faced by him and his family problem and requested the higher authority to reinstate him back in service. However, the said representation

had been considered as appeal against the order passed by the Disciplinary

Authority and Appellate Authority by non speaking order dated 09.01.2014

upheld the penalty which is again in violation of rules as also the quasi judicial authority failed to assign any reason in the said order.

(h) The respondents while rejecting his Mercy Petition did not pass a fair speaking order in consideration of the illegalities committed by the authorities concerned at various stages of disciplinary proceedings and failed to consider the principles of natural justice and Doctrine of equality.

4 Respondents contested the OA by filing their detailed reply. The counsel for respondents mainly submitted as under:-

4.1 The applicant in his previous OA No.194/2015 had made almost all the prayers that have now been made in the present OA.

4.2 It was consistent demand on the part of the applicant before the authorities as to the misconduct committed by him. Taking cognisance of such

demand and gravity of the charge, the Disciplinary Authority deemed it fit to impose major penalty of removal from service. The said decision of DA

was upheld by Appellate Authority, Revision Authority, as also by the Hon'ble President while considering his Mercy Petition. As noted hereinabove

challenged to the said orders under OA No. 194/2015 was withdrawn by the applicant with a liberty to submit his representation/Mercy Petition before

the competent authority, in view of the factual matrix, now it is not open to him to challenge the departmental proceeding initiated against him and the

decision taken by Disciplinary Authority, Appellate Authority and Revision Authority. It is also noticed that pursuant to the order dated 24.07.2017

passed by this Tribunal in OA 194/2015, the applicant avail the opportunity granted to him for filing his representation/Mercy Petition.

4.3 The Competent Authority has considered the grounds stated by the applicant in his Mercy Petition and by speaking order same was rejected. In its

order, the Competent Authority recorded its findings for its conclusion that there was nothing in the instant petition which could mitigate the proven

guilt of the petitioner. Drunkenness while working is a serious misconduct in view of both the safety of the train and safety of the passengers and

needs to be dealt with in a commensurate manner. Therefore, it is not correct on the part of applicant to state that Competent Authority has not

recorded any reasons or not passed speaking order while rejecting his Mercy Petition.

4.4 Based on the evidence on record, i.e., breathalyzer ""positive report which was taken on the spot while applicant was on duty in presence of witnesses, the said report clearly indicates that applicant was in drunken condition on duty and the admission of the charges by applicant, the Disciplinary Authority held the charges levelled against applicant stands proved. Accordingly, the DA impose major penalty. Therefore, the said decision of the DA cannot be said to be harsh or excessive or suffers from any procedural irregularities.

4.5 It is stated by the respondent that in the present case, the applicant had availed all the opportunities to defend his case and at all the stages he admitted his guilt and prayed for reinstatement by taking a lenient view. However, the Competent Authority did not find it fit to accept the said request of the applicant in light of serious nature of the misconduct committed by the applicant. The punishment is just and proper and cannot be said to be disproportionate. The applicant is not entitled to any relief as prayed for.

5 The applicant has also filed his rejoinder as also the written submissions and reiterated submissions in the OA.

5.1 Additionally the counsel for applicant has placed reliance on judgments of Hon'ble Apex Court in the case of Naik Sardar Singh v/s Union of India

& Ors reported in (1991) 3 SCC 213 and submitted that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution.

5.2 The Disciplinary Authority has not conducted preliminary inquiry before issuance of charge sheet and it has violated the procedure for imposition of penalty. The learned counsel for the applicant submitted that the judgments relied upon by the applicant have been further stated in para 5(d) of the OA, relating to the ground of procedural failure in conducting the departmental inquiry as also about similar penalty in similar cases.

5.3 Learned counsel additionally submits that it is a case of no evidence, and the conclusion or finding of the Inquiry Officer was without any reliable evidence. Further, neither the crucial witnesses like Sr. DMO who took the blood sample, CTTC and one Shri M S Meena who were present throughout were examined nor the blood sample taken in their presence and the laboratory report showing the level of alcohol in the blood of the

applicant were brought on record or authenticated. Therefore unambiguous inference may be drawn that there was nothing like alcohol in the

applicant's blood sample but the case was fabricated against him by CTTC just to cover up his own fault as to later departure of the train failing to

make arrangement in place of applicant to work on the same train in time.

6 Heard the counsel for parties. Perused the OA and material placed on record.

7 In the present case applicant while working as Loco Pilot (Goods) UDNA-Mumbai, Division, Western Railway, was served with major penalty

charge sheet dated 15.01.2013 S-5 under the provisions of Rule 9 of Railway Servants (Discipline & Appeal) Rules 1968 for the charges that on

30.10.2012, while signing ON duty to work Train No.59052 in NDB lobby at 2.31 hours, breath-analyzer test of the applicant was taken by TCC and

he was found positive with 81 mg/100 ml. Therefore he was taken off from duty and another Loco Pilot (Goods) was deputed to work the train which

departed 35 minutes late from the scheduled time from the station. According to policy on drunkenness on duty, the applicant was found in intoxicated

condition on duty. For this misconduct, major penalty proceedings under the provision of Rule-9 were initiated vide memorandum dated 15.01.2013. In

the said inquiry, applicant participated, at all stages the charges levelled against him. In his presence the witnesses were examined and on conclusion

of inquiry, the Inquiry Officer submitted his report wherein the charges levelled against the applicant stood established. The copy of the said report

was given to the applicant. He submitted his representation dated 16.10.2013 (Annexure A/7) wherein he admitted his guilt and rendered his apology

with the promise that in future he would be extra vigilant to see that it did not happen again and prayed for a lenient view considering his family

responsibilities. Since the CO/applicant had accepted the charge and the reason of disturbance in his family was considered by the Disciplinary

Authority and held that this was a serious mistake and could not be accepted on any ground.

Accordingly, major punishment of removal from service was imposed vide order dated 18.11.2013. It is noticed that the applicant had admitted his

misconduct before the Appellate Authority and Revision Authority and requested for a lenient view. Both Appellate Authority and Revision Authority

had dismissed his request. Aggrieved by said Disciplinary Proceedings and

decision thereon applicant had filed OA 194/15, before this Tribunal, which, after the respondents filed their counter reply, the applicant had withdrawn with a liberty to make a representation before the Competent Authority. In

the circumstances it is not open for the applicant to re-agitate the grievance against the initiation of disciplinary proceedings against him.

8 As noted hereinabove it is also not in dispute that after receipt of the Inquiry Report the applicant had submitted his representation/explanation

wherein he had admitted the findings of Inquiry Officer as also his guilt and at all the stages he prayed for less punishment and not raised any

grievance that he was not afforded sufficient opportunity to defend his case. As such, the record reveals that the applicant/CO had admitted his guilt

from the beginning and availed all the opportunity to justify his family circumstances for consumption of alcohol and coming on duty. Not only that, he

requested for lenient view before the Disciplinary Authority, Appellate Authority and Revision Authority. Therefore, the submission of the counsel for

the applicant about violation of principles of natural justice during the departmental inquiry, procedural violation in conducting Inquiry and imposition of

major penalty is not tenable. In the facts and circumstances of the present case, the judgments relied upon by the counsel for the applicant is also not

helpful to him.

9 The Appellate Authority in its order dated 09.01.2014 categorically held that the applicant had tested positive on 30.10.2012 with 81mg/100 ml.

alcohol and as per GR 2.09 (i) if a Railway servant is found in an intoxicated state at any Railway premises, he is liable to be summarily dismissed.

Further, as per Railway Board's revised policy on drunkenness circulated vide order dated 02.11.2012, the punishment category (i) i.e. for running

staff is removal from service in case alcohol level found is more than 21mg/100 ml in blood and accordingly upheld the penalty of removal from

service. The counsel for the applicant attempted to explain that as per the policy dated 27.11.2001 on ""Drunkenness on duty"" Annexure A/12, wherein

para-6 does not stipulate major penalty in case of drunkenness. But in this regard it can be seen that the charges levelled against the applicant clearly

indicate that the applicant had committed the misconduct in terms of GR 2.09; he was found intoxicated on duty and he admitted the said charges,

Accordingly, the charges levelled against the applicant were proved and major

penalty was imposed. Thus the submission of the applicant is not tenable.

10 The Competent Authority vide impugned order dated 16.11.2017 considered the grounds stated in his representation and by recording cogent reason came to the conclusion that there was nothing in his representation which mitigated the proven guilt of the applicant. Drunkenness while working on the train is a serious misconduct in view of the safety of both the train and the passengers and needs to be dealt with in the manner laid down in the Rules. For the said reason, the Hon'ble President rejected the Mercy petition of applicant. We do not find any procedural infirmity in the said decision.

11 At this stage it is appropriate to refer the decision of Hon'ble Apex Court on the point of scope of judicial review of departmental proceedings as held in the case of Bank of India and another v. Degala Suryanarayana [(1999) 5 SCC 762], at paragraph-11 :-

Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon re appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. ...

12 Keeping in mind the aforesaid dictum of Hon'ble Apex Court, the submission of the learned counsel for the applicant that respondents have held applicant guilty on the basis of breath-analyzer test and had not placed on record report of blood sample as also respondents have not followed the instructions contained in Railway Manual with respect to taking blood sample to

prove drunkenness is also not acceptable. In the facts and circumstances of the present case, more particularly the applicant's admission that he had tested positive while he was put to breath-analyzer test, the report of which showed 81mg/100 ml and on the said proven material on record, the said evidence was sufficient for the respondents to come to the conclusion that the charges levelled against applicant stood proved. The argument that the present case had no evidence is not borne out by the facts and records referred to in this case. We do not find any flaw in the said decision.

13 It is appropriate to mention that in the recent judgment passed by the Hon'ble Apex Court in the case of Pravin Kumar Vs. Union of India reported in (2020) 9 SCC 471, the 3 Judge Bench of Hon'ble Apex Court by considering the various judgment passed by its earlier Benches on the point of scope of judicial review in service matter reiterated the settled principle of law and held that ""....it would be gain said that judicial review is an evaluation of the decision - making process and not the merits of the decision itself. It ought to be used to correct manifest error of law of procedure, which might result in significant injustice or in case of bias or gross unreasonableness of outcome.

Further, while considering the point of Punishment and plea of leniency, the Hon'ble Apex Court in para 38 of the said judgment held that : ""...but for grave offences there is a need to send a clear message of deterrence to the society. Charges such as corruption, misappropriation and gross indiscipline are prime examples of the latter category, and ought to be dealt with strictly.

14 Applying the aforesaid guidelines to the facts of the case at hand, it is clear that removal from service is not disproportionate to the gravity of charges of gross indiscipline which have been proven against the applicant herein and taking any other view would be an anathema to service as held by the Hon'ble Apex Court in the case of Pravin Kumar (Supra). In our considered opinion, the applicant's contention that the major penalty of removal from service is disproportionate to the allegation levelled against the applicant is not acceptable. OA lacks merit and is accordingly dismissed.

No order as to costs.