

**(2012) 06 MP CK 0034**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2971 of 2010**

Durga Prasad Kewat

APPELLANT

Vs

The Chief Mechanical Engineer, The Additional Divisional  
Manager Railway, The Senior Divisional Engineer, The  
Assistant Divisional Engineer Manager

RESPONDENT

**Date of Decision : 21-06-2012**

**Acts Referred:**

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 25

**Citation : (2012) 3 JLI 194**

**Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J**

**Bench : Division Bench**

**Advocate : C.A. Thomas, for the Appellant; Rajesh Soni, learned counsel, for the Respondent**

**Final Decision : Dismissed**

## Judgement

1. Being aggrieved by the order dated 15-01-2010 passed by Central Administrative Tribunal, Jabalpur Bench, Jabalpur, petitioner has filed this petition. By the impugned order the Tribunal dismissed the Original Application No. 1110 of 2009 which was directed against the order dated 08-12-2006 whereby in a revision the punishment to the petitioner was enhanced from stoppage of one increment with non-cumulative effect to that of reducing pay to one stage below for a period of three years with non-cumulative effect in the same time scale. Relevant facts giving rise to this petition briefly are that the petitioner, Technician (mechanical) Grade-I, Carriage and Wagon Rack Maintenance, West Central Railway, Jabalpur, was detailed on 07-05-2006 on duty between 0 hours to 8.00 A.M. That between 4-5 A.M. on 07-05-2006 on an inspection being carried out the petitioner was found sleeping in coach No. 07404 SLRWC. The said act on the part of the petitioner led to issuance of a charge-sheet/show cause notice dated 09-05-2006 under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 for inflicting minor penalty. Petitioner on receiving the notice tendered his explanation on 31-05-2006

explaining thereby that at the relevant time because of abdominal gastric problem he was lying down in the coach but not sleeping.

2. The Disciplinary Authority after taking into consideration the explanation tendered by the petitioner and finding that no cogent material has been brought on record by the petitioner to substantiate the explanation of ailment that the petitioner was suffering from gastric pain, found him guilty of the charges and inflicted the punishment of stoppage of one increment with non accumulative effect.

3. Aggrieved, petitioner preferred an appeal. The Appellate Authority taking note of the entire facts and disagreeing with quantum of punishment inflicted for dereliction of duty issued a show cause notice on 06-07-2006 as to why the punishment be not enhanced to that of stoppage of three increments with non-cumulative effect. Responding to said notice petitioner filed the reply denying the allegations. The appellate authority found that the petitioner has tendered a different ailment in his explanation and, therefore, disbelieved the version that he was suffering from abdominal problem; but taking into consideration the undertaking given by the petitioner that the mistake committed by him will not be repeated in future, withdrew the notice of enhancement of punishment but upheld the punishment inflicted by the disciplinary authority.

4. Aggrieved, petitioner preferred further appeal/revision. The appellate/revisional authority invoking its revisional jurisdiction called upon the petitioner by a show cause notice dated 17-11-2006 as to why the penalty imposed on the petitioner be not enhanced as he was apprehended sleeping on duty. Petitioner denied the charges.

5. The appellate/revisional authority after considering the representation preferred by the petitioner and giving him personal hearing and on a finding that the petitioner could not substantiate the version of suffering pain in the stomach as also that the petitioner has failed to establish that the suffering was due to use of heavy hammer, enhanced the punishment of the petitioner from stoppage of one increment with non-cumulative effect to that of reduction of pay by one stage below for a period of 3 years with non-cumulative effect in time scale of Rs. 4500-7000 (RSRP) from Rs. 5750/- to Rs. 5625/- by order dated 08-12-2006. The petitioner challenged the order in revision. The revisional authority by its order dated 27-11-2007 upheld the punishment inflicted by the appellate authority.

6. Aggrieved, the petitioner preferred Original Application before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur. The Tribunal on the basis of the material brought before it declined to interfere with the punishment inflicted upon the petitioner on a finding that there is no perversity and that the petitioner has not been able to substantiate his abdominal ailment by any cogent material. Aggrieved, the petitioner has preferred this petition.

7. Reiterating, the argument put forth by the petitioner before the Tribunal it is

assimilated by the learned counsel for the petitioner that departmental authorities as well as the Tribunal lost sight of the fact that burden to prove that the petitioner was found sleeping during duty hours was on the department who had issued the charge sheet. It is urged that, the department has failed to discharge such onus. And it was not proper on the part of the departmental authorities as well as the Tribunal to have shifted the burden on the petitioner that it was the petitioner who was required to disclose and establish factum of abdominal ailment. It is urged that in absence of such a disclosure, finding against the petitioner has been recorded that he was found sleeping during duty hours. It is urged that there being a perversity of finding, the Tribunal ought to have quashed the entire proceedings.

8. The respondents on their turn substantiates the infliction of penalty on the petitioner on the ground that the petitioner during inspection carried out, was found sleeping between 4-5 A.M. when he was detailed on duty on 07-05-2006 between 00.00 hours to 8.00 A.M. It is urged that, the explanation tendered by the petitioner that he was not sleeping but due to stomach ailment he was lying down in the carriage, shifted the onus on the petitioner to have produced the material in substantiation of his claim that he was suffering abdominal ailment. It is urged that, in absence of such material the disciplinary authority was justified in holding that the petitioner was found guilty of misconduct of sleeping during duty hours, which was conduct unbecoming of a government servant and was violative of Rule 3 (1) (i) (ii) (iii) of Railway Services (Conduct) Rules, 1966. It is contended that the explanation tendered by the petitioner was duly appreciated by the Disciplinary Authority before the petitioner was held guilty of such charge, which in turn has rightly been appreciated by the appellate and revisional authority. In respect of enhancement of punishment it is contended by the learned counsel for the respondents that the same was inflicted after affording reasonable opportunity of hearing as is contemplated under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 and was in commensurate with the charge of dereliction of duty. It is urged that since the finding arrived at by the disciplinary authority is on the basis of cogent material brought on record, the infliction of punishment thereupon does not suffer from vice of perversity or arbitrariness. It is accordingly contended that the petition deserves to be dismissed.

9. Considered the rival submissions at length and perused the entire documents which are brought on record.

10. Trite it is that the scope of interference in a finding of fact arrived at by the Inquiry Officer is limited. (Please see The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao, The same is confined as to whether the procedure as laid down under the Rules has been properly followed. In Bank of India and Another Vs. Degala Suryanarayana, it is observed :

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 malafides 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 findings. The Court cannot embark upon reappreciating 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, in Union of India (UOI) Vs. H.C. Goel, the Constitution Bench has held :-

23. the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not.

11. In the case at hand we are not commended to any material as to indicate that the petitioner has been refused any effective opportunity in defending the case against a minor penalty charge.

12. Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 lays down the procedure for imposing minor penalties :-

11. Procedure for imposing minor penalties.- (1) Subject to the provisions of sub-clause (iv) of clause (a) of sub-rule (9) of Rule 9 and of sub-rule (4) of Rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after -

(a) informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (60 to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9, before making any order imposing on the Railway servant any such penalty.

(3) Deleted.

(4) The record of the proceedings in cases specified in sub-rules (1) and (2) shall include -

(i) a copy of the intimation to the Railway servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry, if any;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.

13. It is apparent from clause (a) of sub-rule (1) of Rule 11 that Railway servant is to be informed of the proposal to take an action against him and reasonable opportunity of making such representation and of the proof of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

14. In the instant case the petitioner was duly served with the minor penalty charge sheet and disciplinary authority after considering the explanation tendered by the petitioner inflicted upon him the penalty whereagainst the petitioner preferred an appeal. The appellate authority being dissatisfied with the quantum of punishment issued a notice to the petitioner as is contemplated in Rule 25 of the Rules of 1968. However, after receiving the explanation he dropped the same and affirmed the order of stoppage of one increment with non-cumulative effect inflicted by the disciplinary authority. In a further appeal preferred by the petitioner the appellate authority exercising its power under rule 25 and after giving an opportunity to the petitioner against the proposed enhancement of punishment inflicted the penalty of reduction of pay by one

stage below for a period of 3 years with non-cumulative effect.

15. The procedure which has been adhered to by the respondents cannot be faulted with as would warrant any interference. In the result, petition fails and is hereby dismissed.