

(2018) 04 CAT CK 0002
In the Central Administrative Tribunal
Case No : Original Application No. 147 Of 2014

Gopal Mukherjee

APPELLANT

Vs

Delhi Metro Rail Corporation Ltd. And Ors

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Delhi Metro Rail Corporation Conduct, Discipline And Appeal Rules, 2005 — Rule 5, 25.15, 32, 34, 39(f)
Delhi Metro Railways General Rules, 2002 — Rule 8b, 8c
Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 04 CAT CK 0002

Hon'ble Judges : Jasmine Ahmed, J;K.N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Meenu Mainee, V.S.R. Krishna

Final Decision : Partly Allowed

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief:-

"b. To Allow the O.A. and Quash the order dated 11.12.2013 passed by the Appellate Authority vide No.DMRC/Ops/D&AR/Major/9793/2013, by which the Appellate Authority has confirmed the order of Disciplinary Authority (ANNEXURE A-1).

c. To Quash the order dated 29.08.2013 passed by Disciplinary Authority vide No.DMRC/TrainOp/9793/9793/Major Penalty/2013, by which the Disciplinary Authority has removed the applicant from his service (ANNEXURE A-2).

d. To Quash the Inquiry Report dated 29.07.2013 submitted by the Ld Inquiry Officer after conducting enquiry in light of Charge Sheet vide letter No.DMRC/TO/D&AR/MAJ/02/2013 dated 02.04.2012 (ANNEXURE A-3).

e. To order the respondents to reinstate the applicant in his respective serviced and also grant him all pending wages and benefits along with other enumeration as provided under prevailing service rules after treating him regular employees without any obstruction."

2. The factual matrix of this case, as noticed from the record, is as under:-

2.1 The applicant joined Delhi Metro Rail Corporation (DMRC) as a Train Operator (TO) in the year 2009. He was confirmed in the service by the DMRC in the year 2010.

2.2 On 11.03.2013 the applicant was served with Annexure A-4 memorandum of charges for minor penalty under Rule 32 of DMRC Conduct, Discipline and Appeal Rules, 2005 (in short, DMRC Rules) in which the following charges were levied against him:

"Statement of articles of charge framed against Shri Gopal Mukherjee, Train Operator/L-3 & 4 and Emp. No.9793 at Dwarka Crew Control Office.

Article-I

On dated 08th March, 2013, that Shri Gopal Mukherjee, Train Operator/L-3 & 4 Emp. No.9793 was driving train no.7629 (as per duty no.193). At Rajiv Chowk Dn p/f, 19:13 hrs Assistant Manager/Line-2/N came to Board in cab holding valid Cab pass and identity card. He was refused entry into the cab intentionally without any valid reason.

Also, while driving train no.7629, he was not in proper uniform i.e. without I-card and name badge.

You have thus violated GR 7 (b) and 12 (a)

ANNEXURE-II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Gopal Mukherjee, Train Operator/L-3 & 4 and Emp. No.9793.

Article-1

On dated 08th March, 2013, that Shri Gopal Mukherjee, Train Operator/L-3 & 4 Emp. No.9793 was driving train no.7629 (as per duty no.193). At Rajiv Chowk Dn p/f, 19:13 hrs Assistant Manager/Line-2 came to Board in cab holding valid Cab pass and identity card. He was refused entry into the cab intentionally without any valid reason.

You have thus violated Rule 5, Misconduct 5.6 of DMRC Conduct, Discipline and Appeal Rules."

2.3 The minor penalty memorandum of charges was withdrawn and Annexure A-6 major penalty memorandum of charges dated 02.04.2013 was issued to the

applicant under Rule 34 of the DMRC Rules. The contents of the Annexure A-6 memorandum of charges are reproduced below:

"Statement of articles of charge framed against Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793

Article-I

Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793 was driving train no.336 on 12th March, 2013. At Rajiv Chowk down platform DGM/O-1 boarded in the cab at 18:25 hrs. At YB DN Platform, he insisted that he will not operate the train further and should be relieved there itself or DGM/O-1 should de-board from the train.

He has thus violated GR 25 (1), sub rule 4.1 (ii) of rule 4 General Conduct and sub rule 5.6 & 5.9 of rule-5 Misconduct of DMRC conduct, discipline and appeal rules.

Article-II

On 08th March, 2013, Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793 was driving train no.7629 (as per duty no.193) at Rajiv Chowk DN P/F, 19:13 hrs, Assistant Manager/Line-2/N came to Board in cab holding valid Cab Pass and identity card. He was refused entry into the cab intentionally without any valid reason.

Also while driving train No.7629 he was not in proper uniform i.e. without I-Card and name badge.

He has thus violated GR 7(b), GR 12 (a) and sub rule 5.6 of rule-5 Misconduct of DMRC conduct, discipline and appeal rules.

ANNEXURE-II

"Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793 posted at DW Crew Control.

Article-I

Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793 was driving train no.336 on 12th March, 2013. At Rajiv Chowk down platform DGM/O-1 boarded in the cab at 18:25 hrs. and he informed to OCC. OCC acknowledges the message and informed to continue. He started arguing with OCC and at YB DN Platform, he insisted that he will not operate the train further and should be relieved there itself or DGM/O-1 should de-board from the train. He has thus violated GR 25 (1), sub rule 4.1 (ii) of rule 4 General Conduct and sub rule 5.6 & 5.9 of rule-5 Misconduct of DMRC conduct, discipline and appeal rules.

Article-II

On 08th March, 2013, Shri Gopal Mukherjee, Train Operator/Line-3 & 4 Emp. No.9793 was driving train no.7629 (as per duty no.193) at Rajiv Chowk DN P/F, 19:13 hrs Assistant Manager/Line-2/N came to Board in cab holding valid Cab Pass and identity card. He was refused entry into the cab intentionally without any valid reason.

Also while driving train No.7629 he was not in proper uniform i.e. without I-Card and name badge.

He has thus violated GR 7(b), GR 12 (a) and sub rule 5.6 of rule-5 Misconduct of DMRC conduct, discipline and appeal rules."

2.4 The applicant was directed to submit his statement of defence within 10 days of receipt of the memorandum of charges and it was further mentioned therein that if he does not submit his written statement of defence on or before the specified date, enquiry proceedings would be commenced.

2.5 The applicant submitted his statement of defence to the major penalty charge-sheet vide Annexure A-7 letter dated 12.04.2013. Earlier to that he has also submitted his statement of defence to the minor penalty charge-sheet vide his Annexure A-5 letter dated 16.03.2013.

2.6 The applicant participated in the enquiry proceedings. The Inquiry Officer (IO) submitted his report on 29.07.2013 (Annexure A-3) in which he concluded as under:

"80. Keeping the totality of facts and circumstances of the case duly supported by the evidence on record and the fact that CO could not adduce any acceptable evidence to support of his plea that he is not guilty of charges and imputations levelled against him, into consideration; articles of charge No. I and II are held as proved, of course subject to findings/observations given in relevant paras supra."

2.7 Acting on the IO's report, the Disciplinary Authority (DA) namely, DGM (Train Operations) vide his impugned Annexure A-2 penalty order dated 29.08.2013 imposed the penalty of 'Removal From Service' on the applicant with immediate effect in terms of Rule-39 (f) of DMRC Conduct Discipline & Appeal Rules.

2.8 Aggrieved by the impugned Annexure A-2 penalty order passed by the DA, the applicant filed statutory appeal before the departmental Appellate Authority (AA) namely, General Manager (Operations) vide his letter dated 12.09.2013 (Annexure A-11). The AA dismissed the appeal vide impugned Annexure A-1 order dated 11.12.2013.

2.9 Aggrieved by the Annexures A-1 & A-2 orders the applicant has filed the instant OA praying for the reliefs as indicated in para-1 (supra).

3. In support of the reliefs prayed, the applicant has broadly pleaded the following important grounds-

3.1 The AA has not applied its judicial mind while passing the impugned Annexure A-1 order and has failed to observe that most of the charges alleged in the charge-sheet were not supported by evidence.

3.2 Both AA and DA have failed to appreciate that the request of the applicant for providing CCTV footage was denied to him by the IO and thus his defence has been prejudiced.

3.3 The AA and the DA also failed to consider the norms laid down in Rule 8b & 8c of Delhi Metro Railways General Rules wherein it is ordained that every Metro Railway Employee shall endeavour to prevent damage or loss to DMRC property and to prevent injuries to passengers, others and himself. These authorities also failed to consider the norms laid down in Rule-12a of these rules, wherein it is mandatory for every employee to wear appropriate badge and proper uniform as specified by the Metro Rail Administration. Furthermore, these authorities did not consider the instructions contained in Rule-51, according to which travelling in the cab should be restricted and should be resorted to only in case of inspection only. The AM/O/L-2 was not having any valid order for inspection on Line-3 towards Vaishali. The AA did not consider the fact that DGM/O-1 did not show his identity card or cab pass to the applicant while boarding at Rajiv Chowk Metro station nor had he mentioned in his note dated 12.03.2013 that he was boarding the train for inspection purpose. Even the charge-sheet is silent on this aspect.

3.4 Office order dated 07.04.2006 envisages that only nominated officers and supervisors of operation wing will be allowed, through valid cab pass, for inspection of driving skill of TO and safety inspection.

3.4 The AA did not consider that for the same offence earlier a minor penalty charge-sheet was issued, which was later withdrawn and a major charge-sheet was issued for it. The AA also failed to consider that in passing the penalty order, the DA has not considered the representation of the applicant properly.

3.5 The Railway Board, based on the judgment of the Hon'ble Supreme Court in P.R. Subramanian's case has issued circular dated 1.12.1993 stating therein that the "Disciplinary authorities could be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case." The Lucknow Bench of this Tribunal in Raja Ram Verma v. Union of India, [2003] (3) SLJ 65 and Hyderabad Bench in the case of C.T. Nagaraj v. Director (Admn.), [1997 (1) SLJ 476] have upheld the Railway Board circular dated 01.12.1993.

3.6 In reply to Article-I of the memorandum of charges wherein it is alleged that the Deputy GM(O)-1 boarded in the cab of driver (applicant) at Rajiv Chowk but the applicant refused to operate the train till such time the said officer de-boarded the train, the applicant in his defence, had clearly stated that the

Deputy GM(O)-1 was neither in uniform nor did he show his identity card or cab pass to the applicant but forcibly entered the cabin of the driver and took liberty by sitting on the chair in the cabin inspite of the fact that the applicant had been insisting that such a person should show the identify card to prove his identity. The applicant could not have taken the risk of allowing an unknown person to enter the driver's cabin which could have posed a potential danger to the safe running of the trains.

3.7 Deputy GM(O)-1 , who was the complainant and material witness, was not included in the list of Prosecution Witness (PW). Failure of the IO to examine him during the enquiry was in violation of the law laid down by the Hon'ble Apex Court in the case of *Hardwari Lal v. State of UP*, [(1998) 8 SCC 582].

3.8 Shri Geeta Ram was appointed as IO who was working as an officer in the office of the Chief Vigilance Commissioner and as such could not have been appointed to hold enquiry as the officers working in the vigilance department are found to be biased and influenced by the vigilance department, as observed by the Hon'ble Apex Court in the case of *Union Of India & Ors vs Prakash Kumar Tandon*, [Civil Appeal No.7349/2008, decided on 17.12.2008].

3.9 The IO has failed to comply with Rule 25.15 of DMRC Conduct, Discipline & Appeal Rules, as he did not examine the applicant. He only asked the applicant to make statement explaining his side of the picture against the charge levelled against him.

3.10 The IO in para-48 of his report has observed that the evidence on record would suggest that the conduct of DGM(O) lacked professionalism and thus, led to clash of egos on both the sides and the ugly situation irked CO (applicant) to behave unprofessionally. In view of this observation, the punishment imposed is highly disproportionate.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly made the following important averments:

4.1 The applicant is a habitually irresponsible and indisciplined official since his joining in DMRC and there have been many cases in the past also when he has been penalized for serious charges. A list of such charges against the applicant and penalty imposed on him vis-a-vis these charges is at Annexure 'A'.

4.2 The contention of the applicant that AM (O) was not in proper uniform and he has not shown his ID card or cab pass is not correct. The AM (O) is an officer of DMRC and it is not mandatory for him to wear the official uniform always. Further the enquiry has established that AM(O) has displayed his ID card and cab pass to the applicant but the applicant told him that due to personal reason, I cannot allow you to board in my cab. The AM(O) in his note dated 11.03.2013 has clearly noted that despite his showing the ID card and cab pass to the applicant he was not allowed to travel.

4.3 The applicant himself in his reply dated 16.03.2013, addressed to Manager/

TO/II has stated that only holding valid cab pass and identity card are not sufficient. This would indicate that the applicant had indeed denied entry to AM(O) even after seeing his ID card and cab pass.

4.4 In the Metro system CCTV footage recording remains available for a limited period of time and when the applicant asked for it the same was not available in the system as he demanded CCTV footage after expiry of the prescribed period of preservation of the CCTV footage.

4.5 The applicant has contended that DGM(O)-I was not known to him and that he did not show his identity card and cab pass to him; in such situation he was obliged to contact OCC and seek instructions. Pertinent to note that in case of the DMRC officer showing his ID card and cab pass, there is no requirement of any further instruction from the OCC.

4.6 After departing from Rajiv Chowk station, the applicant had made conversation a number of times with OCC, who confirmed three times that the person is DGM(O)-I and directed him to take him to his destination. The applicant kept arguing with the OCC and at Yamuna Bank DN platform, he insisted that he would not operate the train further and he should be relieved there itself unless DGM(O)-I de-boards from the train. After getting the identity of DGM(O)-I confirmed by the OCC, the applicant ought to have allowed him in the cabin and taken him to his destination. The DGM(O)-I, however, looking at the agitated mind of the applicant decided to de-board the train in the interest of the passenger safety. These details have also been noted by the IO in its report.

5. The applicant filed rejoinder to the reply filed on behalf of the respondents in which he, by and large, reiterated his averments in the OA. He, however, has enclosed a note of GM/HR(O&M) dated 18.10.2012 wherein it is stated that for the employees working in the field/Metro Bhawan, it is compulsory to come on duty in proper uniform and also to display his/her identity at Metro offices/stations/workshops etc.

6. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 19.01.2018. Arguments of Mrs. Meenu Mainee, learned counsel for the applicant and that of Mr. V.S.R. Krishna, learned counsel for the respondents were heard.

7. Mrs. Mainee, learned counsel for the applicant submitted that the dictum of Hon'ble Apex Court in the case of Ministry of Finance v. S.B. Ramesh, [(1998) 3 SCC 227] has not been followed by the respondents. It was mandatory on the part of the IO to examine the applicant during the course of enquiry. Such a view has also been taken by this Tribunal in the case of Satyapal Arora v. Union of India, [1990 (2) SLJ 100]. She further stated that the order of the AA is a non-speaking order and thus liable to be quashed. She said that even the AA in its Annexure A-2 order has noted that the applicant contained to indulge in irresponsible behaviour in spite of being taken up under DAR earlier. This observation was extraneous as the misdemeanour alleged is not part of the

memorandum of charges.

7.1 Mrs. Meenu vehemently argued that non-providing of CCTV footage to the applicant has severely prejudiced his defence and that such footage could have proved as to whether the DGM(O)-I had shown his identity card and cabin pass to the applicant or not.

7.2 She further stated that the applicant had submitted a detailed representation to the DA (Annexure A-10) on 16.08.2013 against the findings of the IO but the DA in its punishment order has not considered the points raised therein.

8. Per contra, Shri V.S.R. Krishna, learned counsel for the respondents submitted that it is incorrect to say that earlier memorandum of charges dated 11.03.2013 for imposition of minor penalty has been withdrawn. As a matter of fact, the charges contained in memorandum of charges dated 11.03.2013 02.04.2013 have been merged with the charges mentioned in Annexure A-16 memorandum of charges for imposition of major penalty. In this connection, he drew our attention to para-6 of the Annexure A-16 memorandum of charges, which reads as under:

"6. He is informed that memorandum of charge for minor penalties No.DMRC/TO/01/13 dated 11.03.2013 has been withdrawn and the charges imputed in the dropped charge sheet are combined with this charge sheet."

8.1 In regard to non-examination of DGM(O)-I as a witness, Shri Krishna submitted that it is the prerogative of the employer to decide as to who all should be arrayed as PWs and the applicant has no right to insist as to who should be examined as PW. He stated that in case the applicant felt that examination of DGM(O)-I was required, in that case he should have listed him as his defence witness and produced him in the enquiry proceedings. The learned counsel for the respondents relied upon the followings judgments in support of his contentions:

i) Union of India and others v. Bishamber Das Dogra, [(2009) 13 SCC 102;

ii) Order of this Tribunal in Ms. Kalpana Dudeja v. Union of India & Ors., dated 30.04.2015, [TA No.04/2014].

9. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. The scope of judicial review in the matters relating to disciplinary proceedings is highly limited.

10. Laying down the scope of judicial review, the Hon'ble Apex Court in Union of India v. P. Gunasekaran, [(2015) 2 SCC 610] has observed as under:

"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, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. 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 Article 226/227 of the Constitution of India, shall not venture into re- appreciation 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;"

(Emphasis supplied)

10.1 In *B.C. Chaturvedi v. Union of India & Others*, [(1995) 6 SCC 749] the Hon'ble Apex Court on the scope of judicial review has held as under:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

10.2 The Hon'ble Apex Court in *Ashif Hamid v. State of J&K*, [(1989) Supp. 2 SCC 364] & *Ekta Shakti Foundation v. Govt. of NCT of Delhi*, [(2006) 10 SCC 337] has held as under:

"i) "While exercising the power of judicial review of administrative action, the

Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. & K.* (AIR 1989 SC 1899), *Shri Sitaram Sugar Co. v. Union of India* (AIR 1990 SC 1277)).

ii) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

iii) The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation."

11. In the instant case, we find that the respondents have followed the principles of natural justice at every stage of conduct of the DE proceedings. The enquiry report clearly establishes that despite the DGM(O)-I and AM(O) having displayed their ID cards and cabin passes to the applicant, who was operating the train, the applicant did not allow their entry in the cabin. The materials placed on record would also indicate that despite the OCC confirming the identity of the DGM(O)-I, the applicant refused him entry into the cabin. The IO has also come to a conclusion that there appeared to be some ego problem between the applicant and the DGM(O)-I. He has also noted that the conduct of DGM(O)-I lacked professionalism and that led to clash of egos on both the sides and the ugly situation irked applicant to behave unprofessionally.

12. The applicant's contention that the earlier memorandum of charges for minor penalty dated 11.03.2013 was withdrawn and a new memorandum of charges (Annexure A-6) was issued for imposition of major penalty is not correct. As a matter of fact, the earlier charge memo has been subsumed in the new charge memo.

13. The contention of the applicant that DGM(O)-I was not examined as a PW is indeed flawed. The respondents have rightly stated that it is the prerogative of the employer to decide as to who all should be arrayed as PW and the accused employee cannot dictate terms in this regard.

14. A very strong plea has been made on behalf of the applicant that non-providing of CCTV footage has prejudiced his case. The respondents, however, have clarified that CCTV footage is preserved only for a prescribed period beyond which it is destroyed. The respondents have clearly stated that by the time applicant asked for CCTV footage, the footage of the day of the incident, had already been deleted as per the extant standing order.

15. It is also contended on behalf of the applicant that DA has relied upon extraneous materials in passing the penalty order. Reference in this regard has been made to the observation of the DA in the penalty order that the applicant has been found to be habitual of irresponsible behaviour in spite of being taken up under DAR earlier also. Suffice to say that the applicant cannot deny the factum of his being punished in the past for his misdemeanours; details of which are given in the table at Annexure 'A'. The DA has only made a passing reference to the earlier punishments but from the reading of the penalty order it is quite clear that the penalty has been imposed upon on the basis of the findings of the IO in his report in relation to the Annexure A-6 Memorandum of Charges.

16. The contention of the applicant that the IO Shri Geeta Ram, who was earlier working under the Central Vigilance Commission and hence he conducted the enquiry proceedings with a prejudice mind is completely rejected. The CVC has a wing called 'Controller of Departmental Inquiries' (CDI), which has been created primarily to assist such departments/organizations/Government entities who do not have officers from within who can act as IO due to lack of knowledge in the disciplinary enquiry matters. The applicant has not substantiated anywhere as to where such a prejudice has been exhibited by the IO in the conduct of the enquiry proceedings.

17. From the IO's report and other documents placed on record, we are of the view that the delinquency of the applicant has been established for which he deserved to be punished. However, we are not convinced with regard to the proportionality of the punishment inflicted. As observed by the IO himself, there appeared to be some ego problems between the DGM(O)-I and the applicant and both displayed unprofessionalism at the spur of the moment. No doubt, the applicant exceeded his limits and despite clear instructions from the OCC as to the identity of the DGM(O)-I, he did not allow him into the cabin. No disruption to train operation, however, was caused by the applicant. Hence, we feel that the punishment of removal from service imposed on him by the DA is far disproportionate to the offence committed. In *Ranjit Thakur v. Union of India & Others*, [(1987) 4 SCC 611], the Hon'ble Supreme Court evolved the principle of proportionality in the following words:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

18. We are of the crystal clear view that the punishment of removal from service

is highly disproportionate. At the same time, we also note that the applicant has not been conducting himself even in the past and had been punished on several occasions. Nevertheless, he did not deserve this disproportionate punishment of removal from service. We feel that ends of justice would meet by directing the respondents to consider imposition of any penalty lesser than the penalty of removal from service.

19. In the conspectus of the discussions in the foregoing paras, we partly allow this OA in the following terms:

a) Impugned Annexure A-1 order passed by the Appellate Authority and Annexure A-2 order passed by the Disciplinary Authority are quashed and set aside. The Disciplinary Authority is directed to impose any penalty lesser than the penalty of removal from service.

b) In view of the (a) supra, the respondents are directed to reinstate the applicant in service within four weeks from the date of receipt of a certified copy of this order. It is, however, made clear that the applicant shall not be entitled to any back wages.

20. No order as to costs.