

(2018) 05 CAT CK 0071

In the Central Administrative Tribunal

Case No : Original Application No. 42 Of 2013, Miscellaneous Application No. 30 Of 2013

Jaipal Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 226, 227

Citation : (2018) 05 CAT CK 0071

Hon'ble Judges : Jasmine Ahmed, J; Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, Shailendra Tiwary

Final Decision : Dismissed/Disposed Of

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:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned penalty order dated 15.12.2010, Appellate Authority order dated 28.02.2011, Revisional Authority order dated 27.06.2011, Charge Sheet dated 14.06.2010, Inquiry Officer Report and all departmental proceedings, declaring to the effect that the same are illegal, against the rules and against the principle of natural justice and consequently the applicant is entitled for all the consequential benefits including reinstatement in service with all consequential benefits including the arrears of difference of pay and allowances."

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

2.1 The applicant joined Railway department as Loco Cleaner and subsequently became Loco Pilot in the year 1992. On 01.01.2010, as a Loco Pilot he was

deputed on train No.2556 (Gorakhdham Express) from New Delhi to Kanpur (CNB). It is stated that due to dense fog then prevailing, his train hit the guard buffer of train No.2418 (Pryag Raj Express) and as a result of this train accident, 12 passengers died and 13 were grievously injured. The applicant was placed under suspension w.e.f. 02.01.2010 and a charge memo dated 14.06.2010 was issued to him, which reads as under:

"On 02.01.2010 the said Shri Jai Pal Singh, Loco Pilot Mail/DLI while working Training No. 2556 Dn, Gorakhdham Express with Loco No. 30015 is held responsible for rear and collision with Train No. 2418 Dn, Paryagraj Express at Km. 1030/22-20 between Bhaupur & Panki stations of ALD Division at about 8.46 hrs. due to violation of G&SR No. 9.02.

By the above act of omission and commission Sh. Jai Pal Singh, Loco Pilot Mail/DLI failed to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner unbecoming a Railway servant thereby contravened rule no. 3.1 (ii) & (iii) of Railway Servant Conduct Rule 1966".

2.2 Departmental Enquiry (DE) proceedings were started against the applicant, which ultimately culminated into the Disciplinary Authority (DA) imposing the penalty of dismissal from service on the applicant vide Annexure A-1 order dated 15.12.2010.

2.3 The applicant preferred an appeal before the departmental Appellate Authority (AA), who vide Annexure A-2 order dated 28.02.2011 modified the punishment as under:

"However, considering his past service record of 36 years and the fact that the negligence has been committed at the fag end of his career, I feel that he should be extended the payment of compassionate allowance @ 2/3rd of the compensation pension to discharge his responsibility towards his family and his dependent aged mother purely as a matter of compassion".

2.4 The applicant preferred a Revision Petition before the Revisionary Authority (RA) against the orders passed by DA and AA, who vide Annexure A-3 order dated 22.06.2011 modified the punishment as under:

"Looking at your career of 36 years service to Railways, the administration has sympathetically considered payment of your allowances at the time of your dismissal from service, but since there is no provision of payment of any compassionate allowance with the penalty of dismissal. Considering your case with utmost compassion, in view of your career perusing children and aged mother, your penalty is converted to 'removal from service' and payment of 80% of the compassionate pension to discharge your responsibilities".

2.5 Aggrieved by the impugned Annexures A-1, A-2 and A-3 orders passed by the DA, AA and RA respectively, the applicant has filed the instant OA praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly stated that the applicant was responsible for the accident which has resulted into many casualties and grievous injuries to several passengers and thus the punishment finally imposed by the RA is quite justified.

4. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties. Arguments of Shri Yogesh Sharma, learned counsel for the applicant and that of Shri Shailendra Tiwary, learned counsel for the respondents were heard on 10.05.2018.

5. Shri Yogesh Sharma, learned counsel for the applicant submitted that Mohd. Irfan, Assistant Loco Pilot, who was with the applicant in the train, was also initially dismissed from service by the DA, but later on the higher authorities in appeal/revision reinstated him in service. A copy of the notice dated 01.05.2012, reinstating Mohd. Irfan, Assistant Loco Pilot was placed on record by Shri Yogesh Sharma, which reads as under:

"Sh. Md. Irfan, S/o Sh. Md. Sultan, ex ALP/GZB Delhi Division was dismissed from service vide Sr. DEE/RSO/NDLS L. No. 230Elect/RSO/90/2010 dated 26-11-2010. Sr. DEE/RSO/NDLS vide their L.No. 230Elect/RSO/113/90/2010 dated 22.03.2012 has informed that on appeal to the Competent Authority, i.e., ADRM/OP/DLI has ordered to re-instate Sh. Md Irfan, ALP/GZB at the bottom of the grade for three years with loss of seniority. Further he will undergo all the stipulated courses as fresh before he is sent on line duty as ALP.

Consequent upon his fitness in medical category Aye-one vide Fit Certificate No. 172816 dated 30.04.2012 Sh. Md. Irfan is hereby reinstated in service under Sr. CC/GZB with the approval of Competent Authority. Accordingly his pay is fixed at the bottom of the scale i.e. 5200-20200+G.P. 1900/- and will remain at this stage of grade for 3 years. He will earn increments after 5 years.

Sr. CC/GZB is hereby directed to ensure that Sh. Md. Irfan will not be booked for line duties & running duties without completing the stipulated training courses. He will be booked for safety camp, Loco & Traffic refresher courses. This has the approval of Competent Authority".

5.1 Shri Sharma argued that like in the case of Mohd. Irfan, Assistant Loco Pilot, the applicant is also praying for taking a lenient view in his case. He submitted that since the applicant has already reached the age of superannuation, his penalty of removal from service may be ordered to be converted into compulsory retirement. This would facilitate the applicant to claim his regular pension.

5.2 Shri Sharma submitted that the applicant is claiming parity with Mohd. Irfan, Assistant Loco Pilot in the matter of punishment. In this regard, he relied on a judgment of Hon'ble Supreme Court in the case of Lucknow K. Gramin Bank (now Allahabad, U.P. Gramin Bank) & Anr. V. Rajendra Singh, [JT 2013 (10) SC 500], wherein on the ground of parity, it is held as under:

"17. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was co- delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in all together different departmental enquiries.

18. Applying these principles to the facts of the present case, we may observe that, no doubt the charges in respect of two sets of employees were identical. Though the other set of employee accepted the charges on the first day of enquiry, a factor which is to be kept in mind, that even those employees had denied the charges in the first instance and accepted these charges only in the departmental enquiry, that too after realizing that similar charges had been proved against the respondents herein in the departmental enquiry. Therefore, it was not a case where those employees had expressed the unconditional apology in the first instance. This may be a mitigating circumstance for the appellants herein. At the same time, we are of the opinion that all these aspects are to be considered by the appellate authority. The High Court did not look into all these aspects and mandated the appellate authority to pass orders imposing a specific penalty only. This direction of the High Court is, accordingly, set aside and the matter is remitted back to the appellate authority to take a decision imposing appropriate penalty on the respondents herein. We are confident that the mitigating circumstances pointed out by the respondents herein would be given due consideration by the appellate authority, keeping in view the ratio of Rajendra Yadav's case as well. It would be open to the respondents herein to make representation in this behalf to the appellate authority on the basis of which the respondents want to contend that they should be given same treatment as meted out to other three employees. Such a representation will be given 15 days from today. Appellate Authority shall pass appropriate orders deciding the appeals afresh within 2 months from today."

5.3 Per contra, Shri Shailendra Tiwary, learned counsel for the respondents submitted that the applicant does not deserve any mercy as he has been negligent in the performance of his duties due to which a major train accident had taken place in which several passengers lost their lives and many of them were grievously injured. He opposed granted of leniency to him. In this regard, Shri Tiwary placed reliance on the judgment of the Hon'ble High Court of Delhi in Ram Prakash v. Union of India & Ors., [W.P. (Civil) No.10308/2015, dated 17.02.2017], wherein, in an identical situation, it has been held as under:

"9. Learned counsel for the petitioner has submitted that there is no evidence that the train was running fast. We do not agree with the said submission. G&SR Rule 9.02 requires that "extreme caution was to be exercised under such conditions which entailed keeping the speed limit of the train below 8 km per hour under all circumstances". The Commissioner of Railways Safety had conducted an enquiry and had found the applicant to be primarily responsible for the collision. Violation of this rule was established by the statements of PWs Sh.Rajender Parshad ALP/CNB (PW-2), Sh. J. J. Boggey Guard/TDL (PW-3), Sh.

M.S. Meena SS/TDL (PW-4), Sh.Hitender Kumar Yadav SLI/DSL/TDL (PW-5), Sh.G.B.Singh SSE/C&E/TDL (PW-6), Sh. P. K. Singh SSE/Signal/TDL (PW-7), Sh.Vijay Kumar Sharma SSE/P/Way/TDL (PW-8) & Sh.Ram Sewask LPM/CNB (PW-9). Not only that, even the Asstt. Loco Pilot of the train of the applicant has accepted this charge on 22.11.2010. The speedometer chart had established that the train had accelerated to the speed of 29 km per hour.

Thus, the petitioner had violated the G&SR Rule 9.02, which resulted in the collision and caused 4 deaths, grievous injuries to 9 passengers and simple injuries to 8 passengers. We, therefore, find no substance in the submissions of the learned counsel for the petitioner.

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11. Learned counsel for the petitioner has also raised the question of victimization. We find absolutely no merit or substance in the plea of victimization as urged by the petitioner. Reliance was placed on *Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors.*, Vol. 49 FJR 332, decided on 10.10.1975, is misplaced. The decision holds that ordinarily, a person is victimized if he is made a scapegoat and is subjected to persecution, prosecution, or punishment for no real fault or guilt of his own in the manner as if he was a sacrificial endurer. A word of caution is necessary. Victimization is a serious charge and, therefore, must be properly and adequately pleaded giving all details and particulars upon which the charge is based to enable the employer to fully meet the allegations. The charge must not be vague or indefinite, being as it is an amalgam of facts as well as inferences and attitudes. Where the actual fault or guilt meriting punishment is established, such action would not suffer from the taint of victimization."

5.4 Shri Tiwary vehemently denied that the applicant has been discriminated against vis-a-vis Mohd. Irphan, Assistant Loco Pilot. He said that it was the applicant who as Loco Pilot was in-charge of operating the train and thus he cannot claim parity with Mohd. Irphan, Assistant Loco Pilot, who was just his assistant, in the matter of penalty.

6. We have considered the arguments of the learned counsel for the parties and have perused the pleadings. Indisputably, the train which the applicant was operating had met with a serious accident by colliding with another train and the collision resulted into as many as 12 casualties and grievous injuries to 13 passengers. The enquiry has established negligence of the applicant for the accident. The DA on the basis of the enquiry report imposed the penalty of dismissal on the applicant which was subsequently modified to removal and payment of 2/3rd compassionate allowance by the RA. Needless to say that the train accident must have caused tremendous amount of fear in the mind of public at large and the official responsible for such accident deserve to be adequately punished. The Hon'ble High Court of Delhi in the case of *Ram Prakash (supra)* in an identical case had refrained from interfering with the punishment inflicted on

the delinquent Loco Pilot therein. The applicant's case is no different. We do not agree with the contention of Shri Yogesh Sharma that since Mohd. Irphan, Assistant Loco Pilot, who was initially dismissed from service, has been subsequently reinstated in appeal/revision by the higher authorities and thus the applicant also deserves lesser punishment. The applicant after all was in-charge of the train operation as Loco Pilot and Mohd. Irphan, Assistant Loco Pilot was his assistant. Therefore, his responsibility for the safe operation of the train was far greater in comparison to the Assistant Loco Pilot. We are of the view that the judgment of the Hon'ble Apex Court in the case of Lucknow K. Gramin Bank (supra) is not applicable to this case on the ground of facts being different.

7. The scope of judicial review in the matters relating to disciplinary proceedings is highly limited. 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)

7. We find that the principles of natural justice have been followed at every stage of the conduct of the enquiry and even the punishment inflicted is not disproportionate to the offence committed.

8. In the conspectus, we do not find any merit in the OA. The OA is accordingly dismissed.

8. Consequently, MA No.30/2013 seeking condonation of delay in filing the OA stands disposed of.

9. No order as to costs.