HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.2655 of 2018

ORAL ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioners have assailed the order dated 27.10.2017 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad in O.A.No.1242 of 2012.

2. The case of the petitioners is that the respondent, while working as Senior Commercial Inspector, was issued a major penalty charge memorandum on 16.02.2010 containing the following two articles of charge:

> "Article-I:
>
> He has failed to bring to the notice of Sr.DCM/SC for wrong proposal of fixation of Reserve Price for Scale "S" trains for second round contract as detailed in the statement of imputations. Thus, he has not followed the rules contained in Para No.(O) of F.M.C.Nos.12/2006 & 36/2006.
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> Article-II:
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> He has fixed the wrong Reserve Price for leasing of 3 SLRs/AGCs in Train No.7032 for second round contract as detailed in the statement of imputations. Thus, he had violated Para No.(O) of F.M.C.No.36/2006."

3. The statement of imputations mentions that the respondent has scrutinized the fixation of reserve price for SLRs/AGCs in certain trains resulting in revenue loss to the Railways. The disciplinary proceedings culminated in the issuance of the order dated 11.06.2011 by the 4th petitioner imposing a penalty of reduction in pay by one stage and reducing the pay of the respondent from Rs.19,060/- to Rs.18,480/- in

the scale of pay of Rs.9,300-34,800/- with Grade Pay of Rs.4,600/- for a period of 48 months without postponing future increments and seniority. Aggrieved by the aforesaid order, the respondent submitted an application to the 3rd petitioner on 26.07.2011 pointing out that the findings of the Inquiry Officer are perverse and hence untenable, and also that the 4th petitioner has imposed the penalty even though it was a case of no evidence against him. Despite that, the learned Tribunal allowed the O.A., filed by the respondent.

4. Learned counsel appearing on behalf of the petitioners submits that the Tribunal has erred in allowing the O.A., on unsupported averments, inter alia, raised during the course of arguments, but not in the pleadings, that non-appointment of PO had rendered the inquiry proceedings null and void; no occasion/fact was brought, either in the OA or during the course of the arguments, to prove that the IO exceeded his limits. Non-appointment of PO per se does not render any disciplinary proceedings void ab initio as laid down by various courts. Learned counsel for the petitioners has relied upon the decision in *K.Farooq Ahmed v. Union of India* (CAT Bangalore Bench) 1990 (1) SLJ (CAT) 304.

5. Learned counsel further submits that the Tribunal at para 14 of its order dated 27.10.2017 quoted from the IO's report that "there is no evidence on record at all, that whether Smt.K.Bhagyam, OS-1 had actually taken technical assistance from Sri K. Murali Krishna while processing the proposal and issuing notification. Similarly, it is not known whether the ACM/SC had taken the assistance of Sri Murali

Krishna while putting up proposal on 02.04.2007. But Smt.K.Bhagyam, in her statement given to vigilance and during her examination and cross-examination in the inquiry had strongly deposed that, Sri K.Murali Krishna had fixed the reserve price and she signed the notings purely trusting him. In the absence of any other supporting evidence, much weight cannot be given to her about the deposition."

6. Learned counsel further submits that para 13 of IO's report states that "purely basing on Ex.P.3 and as reasoned in para 11, it can be said that Sri K.Murali Krishna has failed to discharge his duties as alleged in Article-I and Article-II of the charge memorandum. Ex.P.3 is the office order issued by the then Sr.DCM/SC which clearly lays down the subjects to be dealt with by the employees named therein. The CE was, inter alia, shown responsible for "Leasing of Parcel space". Though the IO had held that "much weight cannot be given to her about the deposition", the fact remains that when seen together the deposition of Smt.K.Bhagyam and Ex.P.3, the failure of the employee as alleged in the charge memorandum is clear.

7. Learned counsel further submits, it is true that judicial review cannot be extended to examination of correctness or reasonableness of the decision as a matter of fact and this aspect has been clearly observed vide para 27 in *Union of India v. Parma Nand*[1] which reads as under:

> "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction.

[1] 1989 SCR (2) 19

> The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.
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> The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

8. In view of the above, learned counsel for the petitioners submits that the Tribunal has failed to see that the respondent has never pointed out any procedural irregularity in the inquiry proceedings conducted by the inquiry officer before the disciplinary authority, appellate authority or the revisional authority. In the whole of OA, there is not even an averment made by the applicant by pointing out any occasion of the D&AR inquiry proceedings wherein the IO had exceeded his role and acted as a Presiding Officer.

9. However, the Tribunal has erred in accepting the arguments of the respondent that non-appointment of PO has vitiated the inquiry proceedings. There was not a single occasion/happening brought out by the applicant before the Tribunal to prove that the IO has acted as PO.

10. On the other hand, the case of the respondent before the Tribunal was that the petitioners have relied upon the evidence of Smt.K.Bhagyam, Office Superintendent even though she was actually involved in the matter and has admitted to the submission of the proposal for fixing of reserve price. Learned counsel for the respondent also invited attention of this Court to the replies given by Sri G.Jagadish Kumar, PW.2, who has clearly stated that there is no record that the fixation of the reserve price was done by the respondent. Hence, this is a case of no evidence against the respondent and the findings of the inquiry officer are perverse. He also pointed out that the petitioners have not appointed any Presenting Officer and that in the absence of Presenting Officer, the inquiry stands vitiated as the Inquiry Officer himself has presented the case on behalf of the petitioners.

11. Before the Tribunal, the respondent relied upon the decision in *Moni Shankar v. Union of India*[2] in which the Supreme Court has held that the inquiry officer acted as a prosecutor and not as an independent quasi-judicial authority and that he did not apply Rule 9(21) of the Rules. The respondent also relied upon the decision in *Mathura Prasad v. Union of India*[3] in which the Supreme Court has held that when an employee is said to be deprived of his livelihood, the procedures laid down under sub-rules are required to be strictly followed. Judicial Review would lie even if there is an error of law apparent on the face of the record. Even an error of facts for sufficient reasons may attract the principles of judicial review.

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[2] [2008 (3) SCC 484]
[3] AIR 2007 SC 381

12. The charge against the respondent is that, as the Coordinating Inspector for leasing of SLR space, he had not scrutinized the fixation of reserve price and not pointed out the discrepancies which arose in the fixation of reserve price. In the Annexure.A-II penalty order issued by the 4th petitioner, the enquiry officer held the charges as proved. The disciplinary authority agreed with the findings of the inquiry officer and held that the note for fixing the correct reserve price was put up by Smt.K.Bhagyam, Officer Superintendent Grade-I on 31.01.2007 after assigning the duty of leasing of parcel space, vide Annexure.R-V office order dated 29.01.2007. Therefore, he failed to check the correctness of the reserve price fixed in accordance with the FMC 36 2006 dated 17.08.2006 and that his duty was to go through the latest circulars whereas put up proposals are in accordance with the latest rules. The disciplinary authority held that as the applicant had neglected his duties, heavy revenue loss has been caused to the Railways and his plea that he did not sign the papers does not absolve him of his responsibility in view of the duties assigned to him. Accordingly, it was held that it was the duty of the respondent to keep abreast of the latest instructions and to check the irregularities and put up the matter to the higher officials. On these grounds, the disciplinary authority imposed the penalty of reduction of the applicant's pay from one stage for a period of 48 months without postponing his future increments and seniority. The appellate authority while considering the appeal filed by the applicant against the decision of the disciplinary authority, however, held as unacceptable the charge that there was a leakage of revenue. It was also held that the violation of rules cited in the statement of imputations was

false. It was observed that this was not the second round of tendering as mentioned in the charge memorandum and that in fact it was the fourth round of tendering. Had it been the second round as mentioned in the charge memorandum, there would have been justification for working out the loss. But the loss has been calculated based on an incorrect assessment that the tender was in the second round. Thus, the appellate authority has observed as follows:

> "In other words having failed in regular 3 rounds of advertising for long term, medium term and short term, 30 days lease and day to day lease, the division should have referred the matter detailing the trains for which the division was unsuccessful in the regular 3 rounds of tendering so that the headquarters would have offered these trains for other divisions of the railway or other railways.
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> While the division had failed in this aspect now working out the loss could be anybody's guess and at best it is only the wild imagination. There is no guarantee other divisions/other railways could have realized more revenue than that was already realized by the SC division. All this indicates possibly there was no leakage of revenue at all."

13. Further, in justification for taking a lenient view, the appellate authority stated as follows:

> "The revenue leakage as assessed is only an imaginary figure as discussed in the paras as detailed above. Possibly whatever was realized was after much widely published open tenders and it could have been the best possible amount the railway realized."

14. From the above facts, it shows that the entire charge against the respondent is without proper basis and that the alleged revenue loss is only an imaginary figure. Even the inquiry officer has held that "there is no evidence on record at all that whether Smt.K.Bhagyam, Office

Superintendent Grade-I, had actually taken the technical assistance from Sri K.Murali Krishna while processing the proposal and issuing notification. Similarly, it is not known whether the ACM/SC had taken the assistance of Sri K.Murali Krishna while putting up the proposal on 02.04.2007 but Smt.K.Bhagyam in her statement given to Vigilance during her examination and cross examination in the inquiry had strongly deposed that Sri K.Murali Krishna had fixed the reserve price and she signed the notices purely trusting him. In the absence of any other supporting evidence much weight cannot be given to her about the deposition."

15. However, after having given the above finding, the inquiry officer held the articles of charge as proved based on Ex.P.3 office order dated 29.01.2007, according to which the respondent has to deal with the subject of leasing of parcel space with effect from 29.01.2007. Having found that there is no supporting evidence against the respondent that he had been involved while processing the proposal, the inquiry officer's finding that the charge is proved just because of Ex.P.3 office order is perverse and unsustainable. In this context, the appellate authority has pointed out that the applicant had taken charge of the subject only on 29.01.2007, whereas the note put up by the concerned Office Superintendent was on 31.01.2007, indicating thereby that the respondent had hardly spent two days in the seat and that in all fairness it would be difficult for a new person to understand the niceties of the circular, which runs into 33 pages.

16. It is pertinent to mention here that there are various processes involved namely estimation of RP, concurrence of RP by Finance and that failure has occurred at various levels and holding only a Coordinating Inspector for the lapse may not be appropriate. Although the appellate authority has only reduced the quantum of penalty, the facts clearly emerge are that the charge itself is without basis, the revenue loss assessed is imaginary, that the reported lapse has occurred at various levels and that it would be unfair to hold the respondent, responsible as he had joined the office only two days prior to the submission of the proposal on 31.01.2007.

17. In view of the above discussion, we do not find any illegality or perversity in the order passed by the learned Tribunal. Therefore, we confirm the same.

18. Finding no merit in the present petition, the same is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the petition, stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

January 31, 2018
MRR