

owners, passing detention order and final orders against the owners, would not be maintainable at the instance of the railway. However, we uphold the maintainability of the petition on the plea raised by the learned counsel for the railway that it result into extreme inconvenience when any goods vehicle of the railway is stopped for checking by the authorities of the Punjab Government under the VAT Act or any other Act. Therefore, we repel the attack on the impugned notices and the orders at the instance of the railway particularly when the owners who are said to be aggrieved party have not come forward with any grievance. The petitioner-railway is not supposed to go to the extent of fighting the cause of owners particularly keeping in view Section 93(e) of the Railways Act.

(25) For the reasons aforementioned, this petition fails and the same is dismissed.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ.

SURINDER SHARMA,—*Petitioner*

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS,—*Respondents***

C.W.P. No. 12923/C of 2003

18th July, 2008

Constitution of India, 1950—Art. 226—Dismissal from service—Charges against petitioner of getting into service by producing a fake certificate—Petitioner falsely reflecting himself as graduate while applying for an examination—Misrepresentation of facts—Disciplinary authority granting opportunity of personal hearing to petitioner but order of punishment not passed—Petitioner refusing to appeal before competent Disciplinary Authority and requesting to take a final decision on basis of material produced—No violation of principles of natural justice or the procedure

***established by Rules— Petitioner does not deserve any leniency—
Petition dismissed.***

Held, that the proceedings are not proved to have been conducted in the manner which is violative of the principles of natural justice or the procedure established by Rules. The reasons of disagreement recorded in extenso were communicated to the petitioner. The petitioner has offered his comments. Though the petitioner appeared for personal hearing before the earlier Disciplinary Authority, but the petitioner refused to appear before the competent Disciplinary Authority before the impugned order was passed. Therefore, the petitioner cannot be permitted to make any grievance in respect of not granting any personal hearing,

(Para 11)

Further held, that the petitioner has produced a fake certificate at the time of seeking appointment with the respondent and had made a false representation of his being a graduate. A person, who has entered into the public service on the basis of a fake document, does not deserve any leniency. He has usurped the public office on the basis of forged certificate. He has misappropriated the public funds on the basis of forged documents.

(Para 16)

Salil Sagar, Senior Advocate, with Aseem Kataria, Advocate,
for the petitioner.

None for the respondents.

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short the Tribunal) on 20th August, 2002, whereby an Original application filed by the petitioner challenging the imposition of punishment of dismissal of the petitioner from service, was dismissed.

(2) The petitioner, while working as Accounts Assistant was served with a charge-sheet for proceedings for imposing the major penalty. The charges against him were two fold. The first charge against the petitioner is that at the time of getting into service, he has produced a fake B.A. Part II mark sheet with his application for the post of Welfare Inspector. The second charge was that while applying for IREM Appendix-III Examination for the years 1987, 1988 and 1989, the petitioner has shown his qualification as B.A., whereas during the years 1990 and 1991, while applying for the said examination, the petitioner reflected himself as graduate. However, the petitioner is neither B.A. nor graduate and, thus, the petitioner has misrepresented the facts.

(3) The petitioner denied the charges levelled. An Inquiry Officer was appointed, who has given his report. As per the said report, charge No. 1 was not proved, whereas charge No. 2 of petitioner's falsely representing himself to be graduate was proved. The Disciplinary Authority forwarded a copy of the Inquiry Report to the petitioner. But after few days, the Disciplinary Authority recorded his note of disagreement and sent the same to the petitioner inviting his defence to the finding recorded by him. Shri G. S. Hira, the then Disciplinary Authority recorded the minutes of the personal hearing dated 14th December, 1999 (Annexure A.14), but,—*vide* communication dated 6th January, 2000 (Annexure A.17) with the Original Application, filed by the petitioner, Shri Anil Sainani has asked the petitioner to appear before him for personal hearing on 10th January, 2000, pointing out that personal hearing granted by Shri G.S. Hira was erroneous as he has taken over as a Deputy Financial Advisor, on 18th November, 1999. The petitioner submitted his reply dated 8th January, 2000 (Annexure A.18) and did not accept the call of the Disciplinary Authority for personal hearing on 10th January, 2000. After the receipt of such reply, the competent authority has passed an order (Annexure A.1) on 14th January, 2000 imposing the punishment of dismissal with immediate effect. The said order was challenged in appeal and revision, but the same was dismissed on 22nd March, 2000. Aggrieved against the orders passed, the petitioner invoked the jurisdiction of the Tribunal, which has remained unsuccessful.

(4) Learned counsel for the petitioner has vehemently argued that the order of punishment imposed upon the petitioner is wholly unjustified as personal hearing was granted to the petitioner by Shri G. S. Hira, who was the earlier Deputy Financial Advisor, but the order of punishment has been passed by Shri Anil Sainani. It is, thus, contended that the order of punishment is patently illegal and against the principles of natural justice. The learned counsel for the petitioner has also relied upon **Nagaraj Shivarao Karjagi *versus* Syndicate Bank Head Office Manipal, (1)** and **C.S.H.A. University *versus* B.D. Goyal (Civil Appeal No. 938 of 1999 decided on 22nd March, 2001)**.

(5) It is also contended that the punishment awarded is highly excessive and disproportionate to the charge of misconduct levelled against the petitioner and, therefore, keeping in view the doctrine of proportionality, the said punishment is not commensurate with the offence committed. Reliance is placed upon **D.P.S. Rullar, Regional Bank *versus* Munna Lal Jain, (2)** **C.M.D. United Commercial Bank *versus* P.C. Kakkar, (3)** and **Union of India *versus* K.G. Soni, (4)**.

(6) Having heard learned counsel for the petitioner at some length, we do not find any merit in the present writ petition.

(7) A perusal of the documents produced by the applicant with the Original Application itself shows that after the reasons of disagreement were communicated by Shri G. S. Hira, an opportunity of personal hearing was granted to the applicant. The minutes dated 14th December, 1999 of such personal hearing have been produced by the petitioner and appended as Annexure A.14. Still further,—*vide* communication Annexure A.17, the transferee Officer called upon the petitioner for personal hearing on 10th January, 2000. The petitioner refused to appear before the Disciplinary authority. The relevant extracts from the communication dated 8th January, 2000 (Annexure A.18) read as under :—

“Under the circumstances, any person with a clear and unbiased frame of mind and having judicious perception, will agree

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- (1) AIR 1991 S.C. 1507
 - (2) AIR 2005 S.C. 584
 - (3) AIR 2003 S.C. 1571
 - (4) (2006) 6 S.C.C. 794

that the inquiry report in this case, for all purposes and legality, stands accepted and the only action left to be taken in the matter is passing of final orders on the findings of the inquiry authority. Any other action will, under Law, be highly unjust and unlawful and is fraught of serious legal implications. I, on my part, do not agree to be a party to any such illegal act and so do not accept your call for a personal hearing on 10th January, 2000. I am, however, still open to any further clarification by Disciplinary Authority, PROVIDED, he could produce any authoritative orders overruling the orders of the Railway Board, contained in their letter of 4th April, 1996, as off repeated by me, now.

Your kind self is, now, requested to take a judicious approach to the subject case with a fair and unbiased mind and pass the final orders on the basis of the material produced before you, as envisaged in the Rule of Law and also the Law of Natural Justice.”

(8) After the said communication, the competent Disciplinary Authority agreed with the disagreement note served upon the petitioner and also considered the representation submitted by the petitioner after giving due consideration to the submissions made therein. It was recorded by the Disciplinary Authority, to the following effect :—

“Your request dated 25th November, 1999 for personal hearing was erroneously considered by Dy. FA & CAO-I the then disciplinary authority and communicated to you,—*vide* letter No. E-308/DCW/A/cs/WA/08/98, dated 30th November, 1999. The personal hearing was granted to you by mistake by Dy. FA & CAO-I on 14th December, 1999, since charge of Workshop Account Section was assumed by me on 18th November, 1999. Therefore, in pursuance of laws of natural justice, *suo-motu* decision was taken to set right the mistake and accordingly you were advised,—*vide* letter No. E-308/DCW/A/cs/WA/08/98, dated 6th January, 2000 to present yourself for personal hearing on 10th January, 2000 before the undersigned. *Vide* your letter dated 8th January, 2000, you have declined the same.”

(9) After recording such observations, the Authority considered the charges levelled against the petitioner and passed a detailed order

of dismissal of the petitioner from service. The Authority considered the defence statement that the application for the post of Welfare Inspector was not accompanied by any document. The Disciplinary Authority found that the petitioner has attached in duplicate the filled pro forma of the application for selection to the post of Welfare Inspector along with B.A. Part-II mark sheet, but the same is not now available on record on account of tampering of the record. It was found that PW No. 2 and PW3 had seen the certificate of graduation in the service record and on the basis of the said certificate, they verified the contents of the application of verification form. The said witnesses have confirmed that some of the Serial Numbers of the file were missing. On the basis of such statements, it was found that the graduation certificate of the petitioner was available in the personal file and there are indications of missing serial numbers in the said files, which proves beyond doubt that the petitioner has submitted the fake certificate of graduation and the same was very much available in the personal file and the same must have been removed at a later stage.

(10) Apart from the said fact, the Disciplinary Authority also considered the statement of Shri Jaswinder Chawla, Senior Accounts Officer PW1. She has deposed that she has attested the mark sheet after the original certificate was produced. She has deposed that the delinquent personally came to her to get attested the photo copy of the mark sheet. The verification from the Panjab University shows that the Roll Number in the said certificate does not tally with the Official Gazette. Still further, non availability of copy of the fake B.A. Certificate only indicates the possibility of tampering with the record.

(11) In view of the above, we are of the opinion that the proceedings are not proved to have been conducted in the manner, which is violative of the principles of natural justice or the procedure established by Rules. The reasons of disagreement recorded in extenso were communicated to the petitioner. The petitioner has offered his comments. Though the petitioner appeared for personal hearing before the earlier Disciplinary Authority, but the petitioner refused to appear before the competent Disciplinary Authority before the impugned order was passed. Therefore, the petitioner cannot be permitted to make any grievance in respect of not granting any personal hearing.

(12) The argument that the Disciplinary Authority has to consider the entire facts himself, is not in dispute. Though the earlier Disciplinary

Authority has granted opportunity of personal hearing to the petitioner, but the order of punishment has not been passed after grant of such personal hearing. The competent Disciplinary Authority has called upon the petitioner for personal hearing as well. The petitioner has declined to avail such personal hearing. In fact, the petitioner himself has requested the Disciplinary Authority to take a final decision on the basis of material produced before him. The Disciplinary Authority has passed an order on the basis of the evidence produced before the Inquiry Officer; the report of the Inquiry Officer and the disagreement note. Therefore, we do not find that there was any violation of the procedure or the rules of natural justice.

(13) In **Nagaraj Shivarao Karjagi's** case (*supra*), the punishment was imposed on the basis of recommendation of the Vigilance Commission. However, in the present case, there was no recommendation from any authority in the matter of punishment, which may violate the dictum of law laid down by the Hon'ble Supreme Court in the aforesaid judgment.

(14) The order in **B.D. Goyal's** case (*supra*) is again of no help to the petitioner. In the said case, it has been found by the Hon'ble Supreme Court that the competent authority is duty bound to record the reasons in writing and it cannot alter the finding of the Inquiry Officer on his ipsi-dixit. In the present case, the disagreement note is quite exhaustive giving complete details of the reasons of disagreement. Therefore, the ratio of the aforesaid judgment provides little assistance to the argument raised by the learned counsel for the petitioner.

(15) The argument raised by the learned counsel for petitioner that punishment awarded should be commensurate with the offence committed, is again not in dispute. The jurisdiction of the Court in the quantum of punishment is very limited. In the judgment rendered in **Munna Lal Jain's** case (*supra*), referred to by the learned counsel for the petitioner, it has been found that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. The Court held to the following effect :—

“The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural

impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury's* case (*supra*) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

15. To put differently unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.
16. In the case in hand the High Court did not record any reason as to how and why it found the punishment shockingly disproportionate. Even there is no discussion on the aspect.”

(16) In the present case, the petitioner has produced a fake certificate at the time of seeking appointment with the respondent and had made a false representation of his being a graduate. A person, who has entered into the public service on the basis of a fake document, does not deserve any leniency. He has usurped the public office on the basis of forged certificate. He has misappropriated the public funds on the basis of forged documents.

(17) In view of the above, we do not find that the punishment awarded to the petitioner, in any manner is disproportionate to his misconduct. Consequently, we do not find any merit in the present writ petition. Hence, the same is dismissed.

R.N.R.