

CENTRAL ADMINISTRATIVE TRIBUNALMUMBAI BENCH, MUMBAIORIGINAL APPLICATION No. 832/2016

Date of Decision: 04.02.2020

CORAM: R. VIJAYKUMAR, MEMBER (A)
 RAVINDER KAUR, MEMBER (J)

Rajan Tayade, Age 49 years,
 Enquiry Cum Reservation Clerk,
 at Lokmanya Tilak Terminus,
 Kurla, under DRM (c) Central Railway,
 Residing at 302/A, Omkamal Pushp CHS,
 Savarkar Nagar, Opp. Lokmanya Bus Depot,
 Thane (west), PIN 400 606.

... *Applicant.*(*By Advocate Shri S. N. Pillai*)**VERSUS**

Union of India
 Through General Manager,
 Central Railway,
 Mumbai CST 400 001.

Sr. Divisional Commercial Manager,
 (Disciplinary Authority)
 O/o the Divisional Railway Manager,
 Central Railway, Mumbai CST 400 001.

Office on Special Duty (services)
 (Appellate Authority)
 O/o the Divisional Railway Manager,
 Central Railway, Mumbai CST 400 001.

Chief Commercial Manager, (P.S)
 (Revising Authority)
 O/o the General Manager,
 Central Railway, Mumbai CST 400 001.

... *Respondents.*(*By Advocate Shri V. D. Vadhavkar*)

ORDERPER: R. VIJAYKUMAR, MEMBER (A)

This application has been filed on 13.10.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

8(i) that this Hon'ble Tribunal be pleased to quash and set aside the Order No.BB/C/CON/48/2011/54 dated 17.01.2012 issued by the Disciplinary Authority imposing penalty (i.e Ann A-1)
(ii) that this Hon'ble Tribunal be pleased to quash and set aside the order No.BB/C/CON/48/2011/54 dated 27.03.2012 issued by the respondent No.3(i.e. Ann A-2)
(iii) that the Hon'ble Tribunal be pleased to quash and set aside the Order No.HPB/309/C-DAR/RT/Mumbai dated 11/02/2013 of the respondent No.4 (i.e. Ann.A-3)
(iv) direct the respondents to give the applicant all consequential the benefits, including arrears of pay and allowances as if the penalty was not imposed upon him.
(v) Cost of this application be awarded.
(vi) Any other and further relief as this Hon'ble Tribunal deem fit and proper under the circumstances of the case."

2. Learned counsel for the applicant removed all objections only by 15.07.2016 except for the objection on limitation for which he filed MA No.926/2016 on 02.12.2016 and the case was finally heard in circulation for Admission on 20.12.2016.

3. The applicant commenced service with the respondents as Junior Booking Clerk on

11.05.1992, was promoted as Senior Booking Clerk on 13.07.1196, was further promoted as Enquiry Cum Reservation Clerk Grade-II (ECRC-II) and then was promoted as ECRC-I on 09.12.2009 which was his grade on 11.05.2011, when a trap was set by Vigilance following which, charges were framed against the applicant in Charge Memo dated 23.06.2011 with the following imputations of charge as contained in Annexure II of the charge memo:

“STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR OF ARTICLE OF CHARGE FRAMED AGAINST SHRI RAJAN TAYADE, ECRC, LTT.

That the said Shri Rajan Tayade, while working as ECRC at LTT Reservation Office at Window No.125 on dated 11.05.2011 committed misconduct in that :

ARTICLE-I

An amount of Rs.997/- found short in his railway cash.

ARTICLE-II

He found involved in connivance in touting activities.

Thus by the above act, Shri Rajan Tayade failed to maintain devotion to duty and has acted in manner of unbecoming of a railway servant and has thereby contravened the provision of para 3.1 (ii) and 3.1(iii) of the railway service Conduct Rules, 1966.

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI RAJAN TAYADE, ECRC, LTT.

ARTICLE-I

A preventive check was conducted on 11.05.2011 at PRS L.T.T. A discreet watch was kept on the touting activities.

The Vigilance team intercepted one person from out side W.No.5 who was giving Rs.1850-00 to Shri Rajan Tayade. He informed that he was standing on Sr. No.03. He presented his form for getting JCT ticket. The ticket bearing PNR No.841-1651284 value Rs.1850/- was pertaining to him. He was paying the value of the ticket and the same time vigilance team has intercepted him. He later identified as Shri Sushil Singh.

Shri Rajan Tayade was asked to produce private cash and Railway cash and he produced Rs.280/- as against declared private cash Rs.280/-. While tallying the Railway cash he produced Rs.19816/- and the value of JCRT Rs.1850/- i.e. total Rs.21666/- as against TTC cash Rs.22,663/-. Thus an amount of Rs.997/- found short in his railway cash. His explanation that he by mistake took Rs.1,000/- less from first passenger is not acceptable. Because had there been the incident he should have informed to Vigilance team before carrying out check.

ARTICLE-II

a. 03 filled in undealt reservation requisition forms were kept on the counter of Shri Rajan Tayade. One person was handing over Rs.6830/- to him and another person was giving Rs. 1850/-.

b. It was observed that one person (2nd in Q) got his reservation and stood nearby counter after receiving his ticket without paying the value of the ticket. Shri Rajan Tayade ECRT collected the amount of his ticket Rs.6830/- after generating the ticket of Next person (3rd in Q).

c. The person who was giving Rs.1850/- was interrogated. He informed that he was standing on Sr.No.03. He presented his form for getting JCT ticket. The ticket bearing PNR No.841-1651284 value Rs.1850/- was pertaining to him. He was paying the value of the ticket and the same time vigilance team has intercepted him. He later identified as Shri Sushil Singh.

d. The statement of Shri Sushil Singh was recorded and he voluntarily agreed that he is involved in touting activities at LTT Station and collects Rs.100/- per Passenger. Therefore he was handed over to IRPF LTT for legal action.

e. The reservation requisition form of Counter No.05 were checked and observed that Form No.4 was not bearing the signature of the passenger and Shri Rajan Tayade, ECRC generated ticket on it. As such his connivance in touting activity cannot be ruled out.

f. Thus by the above act, Shri Rajan Tayade, failed to maintain devotion to duty and has acted in manner of unbecoming of a railway servant and has thereby contravened the provision of para 3.1(ii) and 3.1(iii) of the railway service conduct rules 1966.

4. The applicant replied to the charge memo and after inquiry was completed, he submitted his defence brief on 10.10.2011 and based on the inquiry report, orders were passed by the Disciplinary Authority on 17.01.2012 recording the following orders:-

"I have carefully gone through the entire DAR case file together with all the relevant documents, report of the enquiry officer and CE's representation dated 10.12.2011.

Shortage of Rs.997/- in CE's Railway cash is an admitted fact. CE's plea that shortage occurred because of dealing mistake cannot be accepted and seems to be an after thought. CE must have created artificial shortage to recoup the same later to conceal his illegal dealing.

Three undealt filled in reservation requisition form were found on CE's counter. CE could not give any credible reply for the same. CE's plea that he was not aware who kept the forms on his counter is hard to believe. The persons apprehended by the vigilance team admitted that he is a tout but only one ticket was found with him which was purchased from CE's counter. As per extant procedures ECRC's should deal one passenger at a time. After completion of transaction with one person in all respect he should deal with the next person in queue.

In view of the above, holding CE guilty of both the charges, I decide to impose the penalty of 'Reversion to initial grade as ECRC-II for a period of ten years with postponement of future increment and loss of seniority.'"

5. In his appeal, the applicant has argued that he had admitted that he was Rs.997/- short in Railway cash. Further, he argued that his mistake was that he had collected less money from a passenger and it was a dealing mistake which resulted in the shortage of Rs.997/-. He has further reiterated his denial and he did not have any extra forms on his counter table and blamed the vigilance team. The Appellate Authority rejected his pleas and confirmed the punishment imposed by the Disciplinary Authority. His Revision application was also rejected with detailed orders as below:

"I have gone through the entire DAR case file along with all relevant documents and Revision Petition dt.09.05.2012 submitted by you. Enquiry was conducted in your case. A preventive check was conducted by Vigilance team in 11.05.2011 and an amount of Rs.977/- was found short with you. Second charge is of involvement in touting activities.

In the Revision Petition, you have stated that you had taken Rs.1000/- less from the first passenger which resulted in shortage of Rs.977 and the same was proved during the inquiry. Further you have stated that the vigilance team was watching touting activity for half an

hour at the LTT from 07.30 hrs onwards and it was the duty of the vigilance team to cross check with the passenger. In fact it is the duty of the ECRC himself to collect the correct amount from the passenger and issue tickets afterwards. There is no question of collecting less amount from the passenger. As regard, touting activity, it was proved that you were involved in touting activity, as much as you had issued the tickets without collecting fare from second persons in queue. The person standing on Sr.no.3 at the counter who was later identified as Shri Singh and Singh himself later on agreed that he was involved in touting activity. The 3 no. of undealt filled requisition forms were available with you. As per extent procedure ECRC should deal one passenger at a time and after completion of transactions, you should deal with next person. In this case you failed to perform duty as per procedure and issued tickets without collecting fare. Even you failed to check the requisition form i.e. 11061 dt.13.05.2011 ex-LTT to Muzzafarpur was unsigned and even name of applicant was not mentioned.

An enquiry was conducted and both charges under Article I and II are proved. You had not brought out any new points/facts in your Revision Petition. AS such, there is no reasons to review your punishment. You have joined the Railway on 11.05.1992 and so far 4 Major Penalty Charge Sheets and 14 number of Minor penalty Charge Sheets have been issued against you. Therefore there is no point to take lenient view.

Considering all above facts,

as Revision Authority the penalty imposed by DA and AA stands good and penalty is as under: "Revision to initial grade as ECERC II for a period of ten years with postponement of future increment and loss of seniority."

6. In this OA, the applicant argues that the Inquiry Officer acted both as Prosecutor as well as Judge since no Presenting Officer was appointed by the Disciplinary Authority. He further argues that there is no documentary evidence in support of allegations in Article-II. Although he admits the issue of shortage raised in Article-I but he submits that the shortage was a result of a dealing mistake which cannot be considered as an act of misconduct but only one of simple negligence. He submits that after he started work at 08.00 am, the Vigilance Officers entered his counter at 08.03 am and he had generated three tickets (serial nos.1-3) by then and did not realize the aspect of shortage by that time. Further, keeping three undealt reservation requisition forms on his counter would not amount to misconduct since these forms were not found on his table which is at a lower

level than the counter. He argues that when he saw some forms on the counter he pushed them towards the window and continued to work for which, he cannot be held responsible. He denies the allegation of any involvement in touting activities and that, if the said Sushil Singh was a tout, it was the duty of RPF to prevent his entry since his job in Booking was to attend everyone standing in the queue. He further alleged that the alleged tout had submitted one requisition form which he accepted and generated tickets which was his duty and further, that the inquiry officer could not have relied on the alleged admission of Sushil Singh that he was a tout.

7. The respondents have raised the issue of limitation since the appellate orders were passed on 27.03.2012 and review petition was disposed on 11.02.2013 whereas this OA was filed on 13.10.2015. Therefore, the OA was barred by limitation. With regard to the appointment of Presenting Officer, they submit that in terms Railway Board letter No.RBE-89/2001 dated

09.05.2001, the Inquiry Officer was authorised so long as he did not put any leading questions to the witnesses and this was not done as may be verified from the record. Therefore, no prejudice was caused to the applicant. They rely on the judgment of the Hon'ble High Court of Kerala in case of H. Rajendra Pai Vs. Chairman Canara Bank 1990 (1) SLR 127 (Kerala HC) for rejecting his arguments. They have stated that all the opportunities required for natural justice were accorded to the applicant and in this OA, he was only seeking the reappreciation of evidence which does not fall within the context of judicial review. The applicant was given full opportunity to cross-examine the witnesses. They also state that the applicant had never objected to the proceedings at any stage of the inquiry. They further argues that there was sufficient evidence against the applicant for imposition of penalty and his misconduct had been fully proved from the evidence and in accordance with the principles applicable in disciplinary proceedings of the preponderance of probabilities.

8. The applicant has filed a rejoinder reiterating his arguments in OA and stated that there is nothing in the evidence to show that the applicant was engaged in touting activity. The applicant argues that there was no evidence before the various authorities for reaching their conclusions and that there was no adequate application of mind.

9. Heard the learned counsels for the parties on the issue. The learned counsel for the applicant reiterates the arguments contained in his pleadings and the learned counsel for the applicant argues that since there was gross miscarriage of justice in the proceedings, the circumstances warranted condonation of delay. The learned counsel for the applicant also submits that the tout was not produced for inquiry and therefore, his submissions to vigilance cannot be accepted as evidence.

10. The learned counsels have been heard at length in the documents and the pleadings have been carefully reviewed including the documents relied on by the respondents and the file

produced by the respondents which was in the custody of vigilance.

11. At the outset, the preliminary aspect of limitation is required to be considered by this Tribunal. The appeal was disposed of on 27.03.2012 and from that date, the applicant has delayed by nearly 31 months for filing this application and he took an additional 14 months to clear objections. The applicant states that delay was not intentional but occurred because the applicant misplaced the file which is not believable for a petitioner who was receiving less salary ever since. The arguments put forward by the applicant is with reference to the decision of the judgment of the Hon'ble Apex Court in the case of N. Balakrishnan Vs. M. Krishnamurthi decided on 03.09.1998 and reported in 1998(7) SCC 123 in which the appellant had engaged an advocate who filed his suit but it was decreed ex-parte and then his further application was dismissed for default which was essentially a failure on the part of his advocate but the appellant continued to pursue the matter. The

Hon'ble Apex Court did not consider him as an irresponsible litigant and condoned the delay as satisfactorily explained by the applicant.

12. The learned counsel for the applicant also relies on the judgment of the Hon'ble Apex Court in Shivdas Vs. Union of India and others decided on 18.01.2007 and reported in 2007 (2) SCC (L&S) 395. In that case, the appellant had claimed disability pension in 1983 which was duly rejected in August 1985 and communicated but appellant claimed that no orders had been received on his appeal and then he filed a writ petition in 2005. Considering his reasons and that pension is a continuing cause of action, the Hon'ble Apex Court directed the Hon'ble High Court to decide the writ petition on merits. Clearly this was a case that depended on the peculiar facts and circumstances of the matter and cannot apply to the present applicant who received the orders of the authorities and is squarely responsible for providing a satisfactory explanation for the delay from date of orders of Appeal or even from the date of

order of the Revisionary Authority on 11.02.2013.

The case of Balakrishnan (Supra) may however apply for delay for removing objections. However, the central plank of his arguments is based on the plea that there has been gross mis-carriage of justice for which the case itself needs to be examined for a final decision in the matter.

13. The applicant has clearly admitted Article-I of the charges but relates it to the issues contained in Article-II. Examination of the hearing record for PW-I and PW-II of prosecution witnesses shows that PW-1 (Shri Saxena) has stated that at the time of surprise inspection, the CE was receiving Rs.6830/- fare amount from buyer for S.No.2 and for buyer for S.No.3 (Rs.1850/-) although tickets had already been issued to them. These were held by respondents to be contrary to instructions requiring him to issue tickets for each form in serial order after receipt of fare cost. He further stated that there were three undealt reservation forms on the applicant's table which were detected by vigilance for which no counter-

questions have been raised during cross-examination or denials thereof. Further, in the examination of PW-2 (Shri Pranab Sen), the witness has mentioned detection of three undealt reservation forms and in cross-examination, he has specifically mentioned, "further it is not understood why three forms were lying at his counter" PW-III (A. K. Dixit) has said that he was not aware of the three forms. In his defence brief, the applicant has stated that he was not aware as to who had kept the forms on his counter. against such denial, the assertions of two witnesses who have maintained their stand during cross-examination is relevant. The charged officer had admitted that he was supposed to receive reservation requests one by one and there was no reason for him to keep three forms on his table including one JCR of Rs.1850/- for issued ticket unless he was clearly violating instructions. Further, if he was handling each form singly, the question of error in receipt of money did not also arise and therefore a discrepancy in money receipt needs stronger

excuses to be given even at the first opportunity. Further, examination of the forms also shows that form no.4 did not have the signature of the passenger or even his agent.

14. The contradiction in evidence and the nature of request made by the applicant in this OA, therefore, clearly suggests that what is being sought through the medium of this OA, is a re-appreciation of evidence that has already been considered and views of applicant heard after giving full opportunity during the process of Inquiry, consideration by the Disciplinary Authority, in Appeal and in Revision. There is strong evidence of multiple forms including one unsigned form in the custody of the applicant as also the fact of multiple forms being handled simultaneously with tickets being generated prior to receiving money contrary to instructions, which has been appreciated by the respondents during the inquiry with the prosecuting witnesses averring to such forms being with the applicant and have not contradicted themselves in cross-examination nor has the applicant specifically

queried them on this behalf. Perusal of the forms that have been produced in the file if the respondents during the hearing shows that whereas the tickets have been issued to persons with forms as marked by the applicant as No.1, No.2, No.3 and No.4 for tickets worth Rs.6595/-, Rs.6830/-, Rs.1850/- and Rs.1764/-, the three undealt forms also bear no.1, no.2 and no.3 accorded by the applicant. Further, the respondents specifically point to the fact that at the time of the vigilance inspection, the private cash (Rs.280/-) of the applicant which was held with him at the same time as the Railway cash and which had been declared prior to commencement of duty, were in order and reflected what had been signed before but it was the railway cash which was short. At that point in time, the applicant failed to give any explanation of the difference of Rs.997 and this he later attributed to receiving Rs.1000/- less from passenger in form no.1 to whom a ticket worth Rs.6595/- had been issued but this reply still begs the question of how Rs.3 then fell in

the excess and thereby questions the validity of the reply itself. Those particular issues and traversal of the facts also reflects the superior knowledge of practices by the administrative authorities in assessing the validity of the applicant's explanation, by treating it as an afterthought. Moreover, only one transaction of receiving forms and cash followed by issue of ticket was completed when the Vigilance Team entered the counter and the CE was handling the subsequent two transactions more or less simultaneously but the applicant could not point to such an error even at the first opportunity to the inspecting team. These aspects particularly underline the danger before this tribunal in being persuaded by the applicant to appreciate the evidence that has been considered by the Disciplinary Authority and after providing extensive opportunity to the charged employee to defend his innocence. It was for the applicant to have presented his full explanation on the nature of his conduct in a convincing manner before the various authorities who have held that the

evidence is adequate to provide a basis for holding the charges proved against the charged employee from the aspect of preponderance of probabilities.

15. In this regard, validity of the disciplinary proceedings is also supported by the judgment of the **Hon'ble Apex Court in case of B. C. Chaturvedi Vs. Union of India and Ors decided on 01.11.1995, reported in 1996 AIR 484, SCC (6) 749** which 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.

The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no

evidence at all, a writ of certiorari could be issued."

16. The Hon'ble Apex Court also referred to its previous decision on the role of the Tribunal as follows:

"Recently, in State Bank of India & Ors. v. Samarendra Kishore Endow & Anr. [J] (1994) 1 SC 217], a Bench of this Court to which two of us (B.P. Jeevan Reddy & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority."

17. The Hon'ble Apex Court, accordingly held as follows:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High

Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

18. In the present case, what has accrued, when viewed in overall terms in the Disciplinary Action, is that the applicant Booking Clerk abused his position and discriminated between passengers who were expecting equal treatment by the respondents Railways but the action of the applicant was clearly unfair and contrary to specific instructions and had the effect of bringing the reputation of the respondents into disrepute and loss of confidence of passengers on the Railway System. In these circumstances of evident and proven misconduct of grave nature, the punishment imposed by the respondents cannot also be considered to be disproportionate.

19. As brought out in the above discussion, there has clearly been no mis-carriage of justice that can be held to warrant condonation of delay nor are the reasons given, in any manner satisfactory. Therefore, the OA is clearly barred by limitation since the applicant has no other reasonable basis for satisfying this Tribunal on the reasons for delay. We have also in this OA, gone through the merits of the case in the context of the claim of the applicant and found the claims unsupported.

20. In these circumstances, this OA is dismissed as lacking in merits as well as for delay. The applicant shall pay legal costs to the respondents estimated at Rs.10,000/- within a period of two weeks from the date of receipt of a certified copy of this order failing which, the respondents are at liberty to recover the amount in any manner known to law.

(Ravinder Kaur)

Member (J)

v.

(R. Vijaykumar)

Member (A)

