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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1388 OF 1997

NEW DELHI, THIS THE ~~28~~ DAY OF JULY, 1997.

**HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.N.SAHU, MEMBER(A)**

Shri Sujan Singh
S/o Shri Phoran Singh
R/o C/o Shri Srinivas Sharma
H.No. 1/7018, Shivaji Park
Shahdara,
Delhi- 32.

...Applicant

(BY ADVOCATE SHRI M.L.SHARMA)

vs.

Union of India through

1. General Manager
Northern Railway
Headquarters Office
Baroda House
New Delhi
2. Divisional Rail Manager
Northern Railway
Allahabad

...Respondents

(BY ADVOCATE SHRI P.S.MAHENDRU)

O R D E R

JUSTICE K.M.AGARWAL:

Though the applicant has made a prayer for quashing the order of removal from service, only a notice on the point of quantum of penalty was directed to be issued on 5.6.1997.

2. The applicant was appointed as Substitute Porter on 31.5.1978. His service was further advanced and he was posted as Coach Attendant since 1981-82. On 5.1.1994, he was performing his duties as Coach Attendant in 1st class coach No.1958 on train No. 4084 Ex. Delhi to Tundla. On that day, he was found to have

allowed two passengers with second class tickets to travel in 1st class. He was, therefore, charge-sheeted on 27.10.1994. The charges were as follows:

- " 1. He allowed two second class ticket holders to travel in 1st class compartment of train no.4084 on 5.1.94 Ex.DLI to ALJN after taking a bribe of Rs.eighty.
- 2. He failed to declare his private cash and refused to show his cash in train no.4084/- on 5.1.94 during vigilance check.
- 3. He did not cooperate during vigilance check and refused to sign on joint note in train no.4084 on 5.1.94."

The charges were found proved. The disciplinary authority passed the impugned order of removal from service. It was confirmed in appeal. The applicant has, therefore, filed this OA for the said relief, but notice was directed to be issued only on the quantum of penalty imposed.

3. The learned counsel for the applicant tried to argue on merits, but we found no case on merits to interfere with the finding that the alleged misconduct was proved against the applicant. In *Government of Tamil Nadu vs. A. Rajapandian*, JT 1994 (7) S.C. 492, it was held that the Tribunal has no jurisdiction to sit as a Court of Appeal over a decision based on the findings of inquiry authority in disciplinary proceedings. It has been said that it is not the function of the Tribunal to review such findings and reach different finding than that of the disciplinary authority. We, therefore, find

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that no case for interference with the finding of the alleged mis-conduct is called for.

4. The learned counsel for the applicant then argued on the quantum of punishment. He relied on a decision of this Tribunal in **Joseph Raiman vs. Union of India**, (1991) 15 ATC 547 and submitted that the punishment awarded was disproportionate to the mis-conduct found proved against the applicant.

5. The learned counsel for the respondents relied on a decision of the Supreme Court in **Union of India vs. Parma Nanda**, 1989 (1) Scale 606 and submitted that the Tribunal has no power to modify the penalty awarded by the disciplinary authority when the finding recorded as to misdemeanour is supported by legal evidence. In **Parma Nanda's** case (*supra*), the Supreme Court considered the question whether the Tribunal has power to modify the penalty awarded to the delinquent official when the findings recorded as to his misdemeanour are supported by legal evidence. It was held in para 27 of the judgement that:

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

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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. The adequacy of penalty unless it is malafide 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."

Giving exception carved out to the said proposition where the penalty is imposed under clause (a) to the second proviso to Article 311 (2) of the Constitution, it was said:

...Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under clause (a)."

In view of this decision of the Supreme Court, we do not find ourselves in a position to interfere with the quantum of punishment imposed on the applicant. The decision of the Tribunal cited by the learned counsel for the applicant may not be of any avail to him in view of the aforesaid decision of the Supreme Court in Parma Nanda's case (supra).

6. For the foregoing reasons this OA fails and
it is hereby dismissed. No costs.

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(K.M.AGARWAL)
CHAIRMAN

Narasimha Sahu
(N.SAHU)
MEMBER(A)

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