

Reserved on 09.02.2021

Pronounced on 12.02.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Tarun Shridhar, Member-A

Original Application No. 330/000675/2017
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Raushan Khatoon aged about 52 years, Wife of Late Aslam Ali, resident of 87 I.J. Loco Colony, Mughalsarai District Chandauli. Presently working as Senior Booking Clerk, East Central Railway, Mughalsarai Division, Mughalsarai.

.....Applicant.

By Advocate – Shri Vinod Kumar.

VERSUS

1. Union of India, through General Manager, East Central Railway, Hazipur.
2. The Additional Divisional Railway Manager, East Central Railway, Mughalsarai.
3. Senior Divisional Commercial Manager, East Central Railway, Mughalsarai.
4. The Divisional Commercial Manager, East Central Railway, Mughalsarai.
5. Sri Vishavajeet, Enquiry Officer, Posted as Vigilance Officer at Vigilance Headquarter, Hazipur.
6. The General Manager (Vigilance) Eastern Railway, Head Quarter, Hazipur.

.....Respondents.

By Advocates : Shri S.K. Ray.

ORDER

Delivered By Hon'ble Mr. Tarun Shridhar, A.M. :-

Shri Vinod Kumar, learned counsel for the applicant and Shri S.K. Ray, learned counsel for the respondents are present in Court.

2. The applicant Smt. Raushan Khatoon, a Senior Booking Clerk in the East Central Railway, Mughalsarai has been penalized under the relevant Disciplinary Rules by way of reducing her pay in her time scale by four stages below, for a period of 4 years, with cumulative effect. Her subsequent Appeal before the Appellate Authority and the Revisional Authority has been rejected. By virtue of this OA, she seeks the following reliefs as reproduced below:-

"(i) To issue an order or direction in the suitable nature quashing the impugned punishment order dated 23.02.2016 passed by the disciplinary authority, order dated 12.07.2016 passed by the appellate authority and order dated 06.04.2017 passed by Revisional Authority i.e. respondent no.4,3 and 2 (Annexure No. A-1, A-2 and A-3 to this original application).

(ii) To issue an order or direction in the suitable nature directing the respondents department to restore the position of applicant as usual prior to effect of punishment with all consequential benefits.

(iii) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) To award the cost of the application to the applicant."

3. The brief facts of the case are that the applicant while working as Senior Booking Clerk in Booking Office, Mughalsarai was issued a charge sheet alleging that during a check conducted by the Vigilance Team at the booking office while she was on duty, an excess cash of Rs. 810/- was found in the cash box; her explanation in this regard was not accepted viz; due to heavy rush she could not account for the cash at the relevant time and that this had been given to her by TTE and she was yet to take it on record because of work load. She was held guilty in the inquiry and imposed the aforesaid punishment.

4. Learned counsel for the applicant argues that in this entire episode of conducting her check/raid and subsequently issuing a charge sheet to the applicant, statutory provisions of the Vigilance Manual have been ignored. He further mentions that the witnesses relied upon during the course of inquiry were merely hearsay witnesses and were not present during the check conducted. The inquiry officer was also appointed by the Vigilance Department which had conducted the check and there was no Gazetted Officer in the Vigilance Team which conducted

this raid. He further points out that no presenting officer was appointed to prosecute the case and the inquiry officer himself became the prosecuting officer.

5. To buttress his argument, the learned counsel for the applicant cites the judgment of the Hon'ble Supreme Court in Civil Appeal No. 7349 of 2008 Union of India and Ors. vs Prakash Kumar Tondan wherein the Court held that when the disciplinary proceedings are initiated at the behest of the Vigilance Department, the Inquiry Officer should not be appointed from the same department as this itself would be a sufficient ground to question the fairness of the inquiry and hence, the disciplinary proceedings are liable to be set aside.

6. Learned counsel for the respondents, on the other hand, argues that the charges against the applicant are serious and amount to misappropriation of public funds, therefore, she does not give her deserve any leniency. The learned counsel would further argue that the necessity of the presence of a Gazetted Officer pointed out by the learned counsel for the applicant would be applicable in "trap case". The present case falls in the category of prior "surprise check". Therefore, the provisions of the Vigilance Manual are not applicable in this incident. He goes on to argue that

the applicant has herself admitted to have been in possession of this excess amount which was given to her by the private person. No further case needs to be proven in the disciplinary proceedings. He draws support case No. 10946 of 2016 in which the Hon'ble High Court of Allahabad has held that mere non adherence to some minor provisions of Vigilance Manual should not affect the entire gamut of disciplinary proceedings.

7. We have heard both the counsels at length and also carefully examined the record of the case. There is no doubt that the statutory provisions of the rules governing the disciplinary proceedings and the provisions of the Vigilance Manual have not been observed in the instant matter. Even in the inquiry report charges have been considered substantiated on the basis of hearsay evidence; there is no concrete evidence to substantiate the charges. In fact, the witnesses merely state that the matter was investigated. They all testify that there was no complaint against the applicant. The witnesses also state that "transaction mistake cannot be ruled out" but go on to suggest that such a huge excess can not happen just due to transaction mistake. So it is abundantly clear that the inquiry officer has drawn his conclusion only on certain presumptions expressed by the

witnesses. Moreover, a sum of Rs. 810/- could hardly be termed as "huge excess". However, without dwelling any further on the merit of the inquiry report, it is obvious that in the absence of adherence to statutory provisions, the orders of the disciplinary authority and the subsequent orders of the Appellate and Revisional Authorities are questionable. Moreover, the order of penalty passed by the Disciplinary Authority i.e. the Divisional Commercial Manager, East Central Railway, Mughalsarai mentions the subject as "Minor Penalty DAR Vig. Case against Smt. Roushan Khatoon, Sr.BC/MGS", but goes on to impose the penalty of reduction in pay in time scale by 04 stages below for a period of four years with cumulative effect. This is not only a major penalty but could also be categorized as one of the harsh major penalties. The learned counsel for the respondents clarifies this to be a clerical omission. Even so, it points to a casual/careless approach that the Disciplinary Authority did not read the order carefully before signing it, especially when the order was for imposition of a major penalty. This, itself is a sufficient ground to vitiate the proceedings.

8. We are of the view that the entire disciplinary proceeding suffers from serious infirmities on account of non-adherence to statutory regulations and basic principles

governing such proceedings. Therefore, the Original Application is allowed and the impugned punishment order dated 23.02.2016 passed by the Disciplinary Authority, as also the subsequent orders dated 12.07.2016 and 06.04.2017 passed by the Appellate and Revisional Authorities respectively are quashed. No order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/