

15

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 96 OF 2004

New Delhi this the 10th day of February, 2005

**Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

Sulekh Chand
S/o Shri Asha Ram,
R/o L-19, Main Bazar
Budh Vihar, Phase-I,
New Delhi.

... Applicant.

(By Advocate Shri R. Pandey)

Versus

1. The D.R.M.,
Northern Railway,
New Delhi.
2. The A.D.R.M. (Technical),
D.R.M. Office, Northern Railway,
New Delhi.
3. The Divisional Engineer-II,
Northern Railway,
New Delhi.

... Respondents.

(By Advocate Shri Narain Bhatia)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A, applicant has challenged the order dated 24.7.1995 whereby he was removed from service and also the order dated 30.04.1996 whereby his appeal was rejected.

S

2. It is submitted by the applicant that he was given a charge-sheet dated 19.1.1994 with the following allegation:

"That he demanded and accepted Rs.100/- (Rs. One Hundred) only from Sh. Bala Ram, Gangman under PW1/GHNA on account of spare to him and to correct absent in pay sheet of 2 days, on 03.8.93 in the office of PW1/GHNA.

By the above act of omission and commission Sh. Sulekh Chand, Sr. Clerk has failed to maintain absolute integrity, devotion towards his duties and acted in a manner of unbecoming of a Rly. Servant thereby contravened rule 3.1 (i), (ii) and (iii) of Rly. Servants (Conduct) Rules, 1966".

Charges were denied by the applicant and the inquiry was held. Inquiry Officer gave his findings wherein the charge against applicant was held to be proved (page 27). Applicant gave his representation but the disciplinary authority removed him from service vide order dated 24.7.1995. Being aggrieved, he gave an appeal but the appeal was also rejected vide order dated 30.4.1996.

3. Applicant has challenged these two orders mainly on two grounds; (i) It is a case of no evidence as Rs.100/- note was not recovered from the applicant but was recovered from the file on the rack; and (ii) the punishment awarded is too harsh and disproportionate to the gravity of the charge levelled against the applicant.

4. Respondents have opposed this O.A. by submitting that the O.A. is barred by limitation inasmuch as the appellate order was also passed on 30.4.1996 whereas the present O.A. has been filed on 14.1.2004. Therefore, it is liable to be dismissed being barred by limitation. On merits, they have submitted that it is a serious matter because applicant was caught red handed while demanding and



accepting bribe of Rs.100/- which was duly proved in the inquiry on the basis of evidence which came on record. Applicant was given full opportunity to defend his case properly. Therefore, no case has been made out for interference by this Tribunal. Counsel for respondents further submits that since the charge was also proved against the applicant, therefore, it was the prerogative of the authorities to decide what punishment was to be given to him. In any case, Tribunal cannot interfere on the question of quantum of punishment. They, therefore, prayed that the O.A. may be dismissed.

5. Applicant has filed an application for condonation of delay.
6. We have heard both the counsel and perused the pleadings as well.
7. In the M.A. for condonation of delay, it has been stated by applicant that after he was terminated, he was facing financial hardship on account of which his eldest son Gajinder aged about 18 years left the home and ^{is P} still not traceable. Thereafter, his daughter Geeta lost her mental balance due to poverty and starvation. She is still mentally retarded. He also lost his mental balance which is evident from the fact that his dues, namely, PF, Gratuity, Insurance, etc. are still lying with the respondents but somehow he could recollect the documents relating to his illegal termination and has now filed the O.A. Therefore, the delay may be condoned.
8. Though applicant has filed an application for condonation of delay but there is no document filed with the application to support the averments made therein. It is stated by the applicant that he lost his mental balance but there is no document either on record to suggest this nor he has stated as to when he



had lost his mental balance nor he has stated as to when he was declared fit and how he could recollect the documents relating to his termination and appeal, etc. It goes without saying that filing of application for condonation of delay is not a mere formality but one has to satisfy the court by showing sufficient and reasonable cause as to why he could not approach the court within the period of limitation and it is only when sufficient cause is shown by the applicant that delay can be condoned. In the instant case, as we have stated above, the application is absolutely vague and is not supported by any documents. Therefore, we are not satisfied with the application filed by applicant seeking condonation of delay. The same is accordingly rejected.

9. It is seen that applicant was given punishment of removal from service vide order dated 24.07.1995 (page 10) and his appeal was also rejected vide order dated 30.4.1996. As per Section 21 of the Administrative Tribunals Act, 1985, he should have filed the O.A. by 30.4.1997 i.e. within one year from the date of cause of action. The present O.A. was admittedly filed on 14.1.2004 i.e. after the stipulated period of limitation as prescribed under the Administrative Tribunals Act, 1985. Therefore, this O.A. is barred by limitation and is liable to be dismissed on this ground alone. However, since we had heard both the counsel on merits as well and find that there is no merit even otherwise in the O.A., therefore, we are dealing with the points raised by applicant's counsel on merits as well.

10. Counsel for the applicant challenged the above said orders on two grounds, namely, that it is a case of no evidence as the note of Rs.100/- was

A handwritten signature in black ink, appearing to be a stylized 'P' or 'D' followed by a curved line.

not recovered from him but was recovered from the file on the rack and that the punishment awarded is too harsh.

11. We have perused the inquiry report which has extensively dealt with the evidence of prosecution witnesses as well as the defence witness. It is seen from the report that ^{on a complaint that B} "Shri Sulekh Chand, Sr. Clerk under PWI/GHNA was demanding Rs.50/- to prepare the spare letter in his favour and Rs.50/- for conversion of his two days absence from duty into leave, a decoy check was planned by them to verify the authenticity of the complaint on 03.8.93. For this purpose they got the association of Sh. Virender Kumar, Constable RPF/ROK as Independent witness. They prepared the test check memo vide Ex.P-2 at Rohtak and gave Rs.350/- as per details mentioned in the test check memo to Sh. Bala Ram who was to act as decoy in this case with the instructions to contact both PWI/GHNA and the CO whosoever was available and will pay the amount from the decoy if demanded and accepted by them. He was instructed that Sh. Virender Kumar, Constable/RPF will act as shadow witness and will remain close to him (decoy) to over hear the conversion and passing over the decoy money in between the decoy & PWI, Sr. Clerk/Gohana. That he (decoy) on completion of transaction will pass on a signal to the raiding party by raising his right hand. That they reached Gohana by Maruti Car. When reached the office of PWI/GHNA, they found that PWI was out as such the decoy alongwith the Independent witness met the CO in his office who was available there". They have ^{thus B} explained how a decoy check was planned to verify the authenticity of complaint received against the applicant. It has clearly come on record during



the departmental inquiry that PW-1 Shri Bala Ram, who was the decoy confirmed that the CO demanded and accepted Rs.100/- from him for preparing a letter of spare in his favour and that he had put a GC note of Rs.100/- on the table of the CO as directed by him. Similarly, Shri Mai Ram, PW-2, who is Gangman, corroborated the statement of PW-1, PW-4, PW-5 and PW-6. He also owned his statement vide Ex.P-3 and confirmed the contents thereof as correct. He confirmed in the inquiry that he collected the mutual transfer orders of the decoy duly approved by AEN/ROK and had handed over the same to the CO. He further stated that the CO demanded Rs.100/- from him, who put a GC note on the table of the CO. The CO directed him to keep the said GC note under the files in the rack lying on the left side of the table of the CO. He also told the raiding party that on the directions of the CO, he had kept the said GC note in the said rack. At his instance, the raiding party got the said GC note recovered from the files in the said rack and a recovery memo had been prepared at Ex.P-4, which was also got signed by all persons in whose presence the recovery of the said GC note of Rs.100/- was made. PW-3 Shri Virender Kumar, who was a shadow witness, also confirmed his statement Ex.P-5 and the contents thereof were correct. He confirmed that he associated the vigilance team in the decoy check on 3.8.1993 and corroborated the facts stated by PW-1 to PW-6. He also confirmed that he heard the conversation in between the decoy and the CO. He confirmed that the CO demanded Rs.100/- from the decoy for sparing him. Shri Bala Ram put Rs.100/- on the table of the CO and he had seen this transaction



through the window from outside the window. He also heard the CO instructing Shri Mai Ram to put the said GC note of Rs.100/- in the rack.

12. Inquiry Officer also dealt with the defence witnesses in detail and gave reasons as to why they cannot be relied upon. In the end after discussing all the evidence, it was held by him that the charges against the CO Shri Sulekh Chand, Sr. Clerk under PW-1/Gohana are proved (page 27).

13. In view of the above discussion, it is clear that there was sufficient evidence on record against the applicant on the basis of which the charge against him was proved. Therefore, it is wrong on the part of the applicant to suggest that it was a case of no evidence. Simply because the note was not recovered from his body, it cannot be said to be a case of no evidence so long as the transaction of demand and offer and acceptance for extraneous reasons is proved in the inquiry. Therefore, the first argument advanced by the applicant's counsel is rejected.

14. Coming to the second contention of applicant's counsel, we would only like to state that it has repeatedly been held by the Hon'ble Supreme Court that once the charge is proved, it is for the authorities to decide as to what punishment should be given to the employee. The Courts cannot sit in appeal over the orders passed by the authorities to decide as to what punishment should be given. On the contrary, Courts can interfere on the point of quantum of punishment only if the punishment awarded is absolutely disproportionate to the gravity of the charge levelled against the delinquent and in that event also at best the Courts can remit the matter back to the ^{authorities} ~~parties~~ to reconsider the question of



quantum of punishment. However, there are also judgments that when it is a case of bribe or accepting illegal gratification, then the amount is not relevant. We would like to quote the judgment of Hon'ble Supreme Court in the case of Regional Manager, U.P. SRTC, Etawah and Ors. Vs. Hoti Lal and Anr. reported in 2003 SCC (L&S) 363 wherein it was clearly held by Hon'ble Supreme Court that it is not only the amount involved but the mental set up, the type of duty and similar relevant circumstances which are important and have to be taken into consideration to decide the proportionality of punishment. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it was held that the matter should be dealt with iron hands and not leniently. In the said case, it was held that in view of the discussion, as held above, termination of the Bus conductor for carrying ticketless passengers in SRTC bus is absolutely right. The mere fact that loss was only Rs.16/- is absolutely inconsequential. Similarly, in the case of Union of India and Ors. Vs. Narain Singh reported in AISLJ 2002 Vol. 3 SC 151, it was held by Hon'ble Supreme Court that once charges are proved, other considerations are not relevant. The Courts cannot interfere in quantum of punishment.

15. In the instant case, applicant was charged for demanding and accepting bribe for preparing a letter of spare in his favour which was definitely not expected from a person sitting at the table where he was posted. If cases like this are let off only on the ground that the amount involved is very small, the administration will never be able to clean up the working of any office. In this



2

9

case, since charges have been proved on the basis of evidence which has come on record against the applicant, therefore, we do not think that any case has been made out by the applicant for interference by the Court.

16. In view of the above discussion, this O.A. is dismissed. No order as to costs.



(Mrs. Meera Chhibber)
Member (J)



(V.K. Majotra)
Vice Chairman (A)

10.2.05

'SRD'