

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 10th day of May 2002.

Original Application no. 624 of 1996.(A)

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Mr. S. Dayal, Administrative Member.

Tufail Ahmad Khan, S/o Sri M.H. Khan,
R/o 48-A Chhote Gazipur, Distt. Gorakhpur,
working as Chief Reservation Supervisor, Computerised,
Reservation Centre N.E. Rly., Gorakhpur.

... Applicant

By Adv : Sri Sanjay Kumar

Versus

1. Union of India, through General Manager, N.E. Rly., Gorakhpur.
2. Divisional Railway Manager, NE Rly., Izatnagar, Distt. Bareilly.
3. Additional Divisional Railway Manager, NE Rly., Izatnagar Division, Distt. Bareilly.
4. Senior Divisional Commercial Manager, NE Rly., Izatnagar, Division, Bareilly.
5. Senior Divisional Personnel Officer, NE Rly., Lucknow Division, Ashoke Marg, Distt. Lucknow.

... Respondents.

By Adv : Sri D.C. Saxena

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 8.11.1993/3.12.1993 (Ann 1) by which the disciplinary authority on conclusion of disciplinary proceeding punished the applicant by reducing him to lowest grade of Ticket Collector (TC) in the scale of Rs. 950-1500 permanently on pay of Rs. 950/- per month. This

order was challenged in appeal. The appellate authority modified the punishment by making it temporary for a period of three years only. The order was further challenged in revision, which was decided on 8.4.1994. The revisional authority ^{✓ Though confirmed the order but} after reducing the punishment of reduction in salary from three years to one year (Ann 3).

2. The facts giving rise to this O.A. are that the applicant was serving as Head TC at Bareilly City on 24.8.1987. He was manning the exit gate at Bareilly City. Two passengers holding ticket nos. 12389 and 12390 Ex. Sewan to Bareilly Via Lucknow got down from 26 Dn express train and passed through the Exit gate. The above tickets of 2 passengers were improper as they were not entitled to travel by 26 Dn Express via Mailani. It is stated that the applicant checked the tickets and when he noticed that the tickets were improper he demanded Rs. 30/- from the passengers, but subsequently he charged Rs. 15/- from the passengers and allowed them to go and did not issue any receipt for the amount received from the passengers. The vigilance **inspector** checked the passengers and when passengers stated that they have paid Rs. 15/- to the TC the passengers were confronted with the TC. Blank EFT with TC was blocked and passengers were regularised vide ETF no. 336505 & 336506 dated 24.8.1987 on the initiative of **Vigilance Inspector**. For the aforesaid misconduct the applicant was served with memo of charge dated 28.7.1988. The applicant filed his reply and denied the charge. The Inquiry Officer (IO) however, submitted his report on the basis of which disciplinary authority passed the order of punishment as stated above which has been modified by appellate and revisional authority.

3. Counter affidavit has been filed by the respondents and we have learned counsel for the parties.

4. Before we proceed to examine the case on merit it would be proper to deal with the two preliminary objections raised by the learned counsel for the respondents. The first submission is that as the applicant succumb to the punishment awarded by disciplinary authority and has accepted reduced salary he is not entitled to challenge the order of punishment. Reliance has been placed in the judgment of Hon'ble Supreme Court in case of State of Punjab & Ors vs. Kishan Niwas (1993) 9 SCC 31 and an unreported judgment of this Tribunal dated 28.8.2000 passed in O.A. no. 637 of 1992. The similar controversy was raised in O.A. 283 of 1994 decided on 20.2.2002 in case of Mohan Lal Vs. U.O.I. & Ors of this Tribunal. After ~~detailed~~ discussion the Division Bench of this Tribunal distinguished the judgment of Hon'ble Supreme Court. The bench observed as under :-

".....The ~~crucial~~ and distinguishable feature is that Krishan Niwas had already undergone the imprisonment of 1½ years awarded to him by Hon'ble High Court under section 325 IPC. As the conviction had become final and he had already served the sentence and the order of departmental appellate authority was based on the same, he could not dispute the same after joining the post. The situation in the present case is however altogether different. The judgment of Hon'ble Supreme Court does not help the respondents. Learned counsel for the respondents has also relied upon an unreported judgment of this Tribunal dated 28.8.2000 in OA no. 637 of 1992. From the perusal of order of this ~~this~~ Tribunal, it is clear that the orders of punishment were assailed before this Tribunal on the ground that the statements of certain witnesses were not supplied. The Tribunal took view that the finding recorded by the departmental authority cannot be challenged before the Tribunal as it is done before

R ----- P

4.

the appellate authority. Bench also held that reappraisal of the evidence is not possible. Thus on merit, the Tribunal was satisfied that no interference is called for. While concluding they also noticed in para 6 that the applicant in that case joined his duty after reversion order and, therefore, he cannot be questioned ^{the} correctness of the order on which he has acted upon. They relied on the judgment of Hon'ble Supreme Court. However, in the order reasons have not been noticed, as to in what circumstances Hon'ble Supreme Court expressed the view and applied the principle of estoppel. In para 7 this Tribunal gave the conclusion that the impugned orders could not be successfully assailed, and dismissed the application.

From the aforesaid it is clear that the principle of estoppel cannot apply in the present case. The delinquent employee under law is entitled to challenge the order of punishment in the Tribunal or in the Court, the estoppel will not come in his way only on the ground that he has complied with the order.

4. The second preliminary objection raised on behalf of the respondents is that the OA is barred by period of limitation. The last order was of 8.7.1994 passed by the revisional authority. The limitation under section 21 of the A.T. Act, 1985, is of one year. The OA could be filed by 8.7.1995. However, this OA has been filed on 28.3.1996. Thus there is delay of about eight months. The applicant in para 3 of the O.A. has explained the delay by stating that the impugned order has been given effect in the month of March 1996, hence, OA is within time. This Tribunal on 25.9.1996 passed the following orders:-

"Sri Sanjay Kumar learned counsel for the applicant. Shri P Mathur who was not ~~been~~ issued appears after copy of the OA was served. He wants to file reply to show cause that the OA is time barred. Let the

....5/-

5.

notice of respondents be served on Sri P Mathur who shall file CA within three weeks and RA within a week, thereafter. Fix on 31.10.96."

Subsequently, Sri D.C. Saxena, appeared for the respondents on 7.4.1997. He requested for 3 weeks further time to file CA. CA was filed. However, no plea challenging the maintainability of OA on the ground of limitation was raised. After hearing parties on 23.9.1997, the order was passed that the OA is formally admitted, Pleadings are complete, List this case for hearing on 7.1.1998! The question is whether, in the above facts and circumstances the applicant can be denied relief on the ground of limitation. The applicant came with a specific plea that the impugned order was implemented in March 1996, then he filed this O.A. This plea has not been controverted by learned counsel for the respondents. The OA was admitted after exchange of pleadings. It shall be deemed that the Bench after hearing the case at admission stage was satisfied that there is no delay. Even otherwise, the case was admitted in 1997, it will not be just and proper to deny the relief after such a long time. The judgment of Hon'ble Supreme Court in Ramesh Chandra Sharma Vs. Udhamp Singh Kamal & Others, 2000 SCC (L&S) 53, relied on by the learned counsel for the respondents cannot be applied in the facts and circumstances of the case. The OA is found to be within time. Thus both the preliminary objections raised by learned counsel for the respondents are rejected.

5. Learned counsel for the applicant has submitted that the applicant challenged the order of punishment before the disciplinary authority on the ground that the passengers in question namely Shri Bihari Mukhia and Sri Harihar Sah were not examined and misconduct ~~of the~~ alleged against the applicant could not be termed as proved without examining the aforesaid two witnesses. Learned counsel for the applicant

6.

has also placed before us the statements of Sri Bihari Mukhia recorded on 24.8.1987 (Ann 5). He has also placed the statement of applicant recorded on same date af-ter he was ~~confornted~~
~~with~~
~~of~~ the statement of the passengers. The statement of the ~~applicant~~
~~passenger~~ was to the following effect:-

"मैंने वो आदमियों को डिटेक्ट किया जिनकी चार्जिंग 15/- रुपये प्रति व्यक्ति के हिसाब से हो रही थी। एक आदमी ने पन्द्रह रुपये देकर शेष पन्द्रह रुपये अपने दूसरे साथी से लेने के लिए बाहर निकला जो कि आफिस के बाहर की ओर छड़ा था त्योहारी विजिलेंस चेक हूआ और चेक होने के बाद दोनों के पैसे रिलिज हुए और मने रसीद बनाई।"

The statement of the applicant thus was that after the tickets were noticed as irregular one passenger paid Rs. 15/- and he had gone to collect Rs. 15/- ~~from~~^{from} another person out side the office where he was checked by Vigilance People and, thereafter, they both came and paid money and the receipt was issued. In view of the statement of the applicant it became necessary for the department to examine the two witnesses. The statement recorded by the vigilance authorities behind the back of the applicant could not be legally used in disciplinary proceedings without giving any opportunity of crossexamination to the applicant. In our opinion thus there was a serious procedural and legal infirmity in conclusion of the proceedings. This aspect was accepted by the appellate authority as well as revisional authority. The appellate authority in concluding paragraph held as under :-

"As a principle of natural justice, the passengers involved should have been brought as witness and put to cross examination. This was not possible because addresses were not recorded. This is not a fault of SPS. However, *prima-facie* case exist. Therefore, in view of lacuna in procedure and considering gravity of case, punishment of reduction to lowest grade in scale Rs. 950-1500 is made temporary



....7/-

7.

for three years only and pay is fixed to Rs. 950/- permonth."

The authority could not appriciate the consequences of this procedural illegality. The applicant could not be punished on prima facie satisfaction of the case. For punishment the satisfaction must be ~~fully proved~~ ^{✓ Complete ✓} and misconduct ought to have been proved. The addresses of the witnesses ought to have been recorded by the department. If it was ~~not~~ ^{✓ not ✓} fault of SPS, it was also not the duty of the applicant to record their addresses and the applicant could not be penalised for the same.

6. The revisional authority also agreed with the observation of the appellate authority and held as under :-

"In the revision petition no new facts have been brought out by the employee. I am in agreement with the observations of ADRM/IZN on the appeal submitted by the employee and consider that the employee has been correctly held guilty of the charges. However, considering the gravity of the offence and facts of the case, the period of punishment is reduced from 3 years to one year."

The revisional authority ~~agreed~~ ^{✓ agreed ✓} with the findings of the appellate authority ~~who states~~ ^{✓ who ✓} that there was ~~no~~ ^{✓ no ✓} procedural illegality, ~~and conclusion~~ ^{✓ but instead of exaggerating ✓} and ~~exonerated~~ [✓] the applicant ~~and~~ [✓] he maintained the punishment ~~of~~ [✓] ~~of~~ [✓] ~~prima facie~~ satisfaction. In our opinion the orders/authorities suffer from a manifest ~~error~~ [✓] ~~wilful conduct~~ [✓] of law and cannot be sustained. The nature of the ~~wilful conduct~~ [✓] ~~error~~ [✓] was such, which could not be proved without examining the passengers.

7. For the reasons stated above, the OA is allowed.

8.

The impugned orders dated 8.11.1993/3.12.1993 (Ann 1), 19.4.1994 (Ann 2) and 8.7.1994 (Ann 3) are quashed. As the ~~misconduct~~^{misconduct} for which the applicant was subjected to disciplinary proceedings was of 1987 and more than 15 years have passed, we do not think that it shall be in the ends of justice to reopen the matter by giving liberty to the respondents to hold fresh inquiry. The applicant shall be entitled for consequential benefits.

8. There shall be no order as to costs.



Member-A



Vice-Chairman

/pc/