

**Reserved**

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

(This the 31<sup>st</sup> Day of January, 2014)

**Hon'ble Mr. Justice S.S. Tiwari- Member (J)  
Hon'ble Ms. B. Bhamathi, Member (A)**

**Original Application No. 1096 of 2005  
(U/S 19, Administrative Tribunal Act, 1985)**

Prem Kumar Shukla, S/o Late R. C. Shukla, R/o 36-C/1, Adarsh Nagar, Bhawapur, District Allahabad.

..... **Applicant**

**By Advocate: Shri Ashish Srivastava**

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow.
3. Sr. Divisional Commercial Manager, Northern Railway, Lucknow.
4. Sr. Divisional Commercial Manager, North Central Railway, Allahabad.

..... **Respondents**

**By Advocate: Shri P. Mathur**

**O R D E R**

**Delivered by Hon'ble Ms. B. Bhamathi, Member (A)**

This O.A. has been instituted for the following relief/s:-

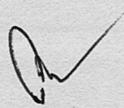
- “(i) *This Hon’ble Court may graciously be pleased to quash the orders dated 21.03.2002 passed by the respondent No.5 and the Appellate Order dated 21.09.2004 passed by the respondent No.2 as well as the Revisional order dated 13.07.2005 passed by the respondent No.2 (Annexure No.A-1, A-2 & A-3 to this O.A.).*
- “(ii) *This Hon’ble Court may graciously be pleased to direct the respondents to pay the amount, which has been reduced by virtue of punishment.*
- “(iii) *Any other direction as may deem fit and proper in the circumstances of the case.*
- “(iv) *Award cost of the original application.”*

2. The case in the OA as presented by the applicant is summarised as below:-

While working as TTE under DRM, Allahabad, the applicant was served a charge sheet on 26.7.2000 following a vigilance trap laid on 2.12.99 in coach S-11 and S -12 of Train No 248 Dn Ex New Delhi. The charge was that the applicant engaged Ram Prasad TTE coach - 8,9,10 and collected illegal money for personal gain from the passengers in coach 11 and 12 for allotment of berths. The applicant then issued EFTs in favour of those allottees. Applicant gave his defence to the charges denying that Ram Prasad was collecting money at the behest of applicant and that, in fact,



he was collecting money on his own volition. The Inquiry Officer (IO) in his inquiry report dated 9.10.2001 held the first two charges against the applicant as proved. But regarding the third charge, the IO concluded that the malpractices were committed by both the applicant and Ram Prasad. The applicant represented against the findings of the IO on 19.1.2002. The Disciplinary Authority, AA (respondent No 5) vide order dated 21.3.2002 awarded punishment to the applicant with reduction of rank from the post of Head TTE Grade Rs 5000-8000 to that of TTE in Grade Rs 4000-6000 for period of two years with cumulative effect. His pay was fixed at Rs 4000 pm with immediate effect. Applicant filed an appeal dated 15.04.2002 before respondent No 3, which was rejected vide order dated 1.6.2004 through a cryptic and non speaking order. Applicant filed a revision petition before respondent No.2 on 8.7.2004. Respondent No. 2 remitted the matter back to respondent No 3 vide order dated 19.8.2004 for passing speaking orders. Applicant represented again on 8.9.2004. Respondent No.3 again rejected the appeal vide order dated 21.09.2004. The applicant filed a revision before respondent No2 on 2/5.11.2004 challenging the order of the AA. On 7.3.2005 respondent No.2 under Rule 25 of Railway (D&A) Rules 1968, issued a show cause stating that penalty imposed



on the applicant by the AA is not commensurate with the gravity of misconduct and why the punishment should not be enhanced. On 24.3.2005, the applicant replied the show cause stating that the revision of appeal dated 2/5.11.2004 is pending and review cannot lie pending disposal of the revision petition. But on 13.7.2005, the respondent No.2 awarded enhanced punishment resulting in further reduction of Grade to 3050-4590 fixing his pay at Rs 3050 pm. from existing time scale for 3 years with cumulative effect. Hence this Original Application. The Tribunal has since stayed the operation of the impugned order dated 13.07.05 vide order dated 08.12.2005 by way of interim relief. But the respondents have not complied with the said order, which amounts to contempt. Before approaching this Tribunal, the applicant has availed alternative remedies under section 20 of the CAT Act 1985. Hence, the OA is maintainable.

3. The applicant has, interalia, challenged all the three impugned orders on the following main grounds:-

- i) DW 1, J. K Srivastava, a passenger who was allotted birth No. 60 in S-11 Coach had categorically deposed that he got a berth for himself in S-11 by paying Ram Prasad, on money



being demanded. He also stated that the applicant was never seen with Ram Prasad. DW1 was dismissed as tutored witness by the DA.

- ii) The Vigilance team did not have any independent witness as per the Vigilance Manual para 704 and 705, which interalia, mandates that 2 gazetted officers should be deployed to act as independent witnesses. OA 1339 of 2001 of the CAT Hyderabad Bench relied upon by the applicant has not been gone into. Shadow witness, Kamal Bhagat, a Class IV staff, vulnerable to superior officer's pressures was a pocket witness.
- iii) Nobody heard the conversation between the applicant and Ram Prasad on demand, payment and acceptance. In fact Ram Prasad admitted while deposing that he had accepted money directly from the passengers on his motion and not at the instance of the applicant.
- iv) Ex P-1 was prepared after the vigilance check.



v) The document sought for from the IO was denied on the ground of it being time-barred. But it has not been clarified under what provisions this was done.

vi) The orders of the Respondent No 3 and 2 are not speaking orders.

vii) The order of respondent No.2 is in violation of the provisions laid down by the Railway Board letter dated 29.2.1956.

viii) The impugned order of respondent No.2 does *not* disclose the reasons for enhancement of the punishment and the grounds of disagreement with the orders of DA with regard to enhancement of punishment.

ix) The respondent No 2 did not pass order on the appeal of the applicant rather the representation to decide the appeal was treated as appeal and the same was decided.

x) The AA has decided the appeal after the expiry of the punishment period. The applicant preferred revision appeal after which he was awarded the



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punishment on 13.7.2005 , which is 15 months after the original punishment, which has already been undergone. This amounts to awarding punishment twice for one incident, which is unconstitutional.

In view of the above, the charges against the applicant have not been proved beyond doubt and hence the applicant should be exonerated through the instant proceedings.

4. The respondents have stated that the impugned orders have been passed after due process and opportunity given to the applicant at every stage. Speaking orders were passed after weighing all the evidence and after detailed analysis and discussions of the rival claims of the prosecuting and defence witnesses as mentioned in the charge sheet and hence the findings cannot be discredited now. In view of provisions as contained in Rule 25 A Sub Clause 3, the Revisional Authority has the power to enhance the punishment within 6 months from the date of the appellate order. Admittedly, cognizance was taken by the Reviewing Authority on 7.3.2005 by giving a show cause notice for enhancement of punishment and same was acknowledged on 19.3.2005 by the applicant, who had submitted his representation dated 24.3.2005 to the said show cause notice. Only after personal



8.

hearing and going through oral, documentary, circumstantial evidences and the gravity of the charges, the enhanced punishment was awarded. Since the order passed by the Revisional Authority is by way of Revision of punishment, hence, as per Rule 18 of the Railway Servant (Discipline and Appeal) Rules, the applicant has an alternative remedy of filing an appeal before the Chief Commercial Manager, Northern railway which has been provided in the order itself. Instead he has preferred the present OA without availing departmental remedy, which is liable to be dismissed, as his claim is premature.

5. We have perused the OA filed by the applicant with annexures A-1 to A 17, the reply dated 10.2.2006 and the Rejoinder reply dated 24.07.2006 along with annexures RA 1 to RA 3. During hearing, the applicant has filed 4 rulings namely **K.J Gandhi vs UoI &ors in OA 155 of 2003 of Ernakulam Bench of CAT, Lal Bahadur Singh vs UoI & Ors in OA No 289 of 2006 of Patna Bench of CAT, Satwati Deswal Vs State of Haryana &ors, A.T. Full Bench Judgments in the case of Bhagwan Din & Ors v. Union of India & ors. and Manoj Kumar Pandey vs. M/s Bharat Coking Coal Ltd. and othrs of Patna High Court (Ranchi Bench).**



6. We have perused short counter reply, the counter reply filed on behalf of respondents 1 to 5.

7. We have heard the arguments by the learned counsels on behalf of applicant and respondents and perused the facts and circumstances of the case.

8. We have noted that the inquiry report has delved into all aspects of the defence representation dated 16.8.2001 filed by the applicant before the IO and discussed all the evidential material adduced and established its nexus with the charges, based on the preponderance of probabilities and the materials available on record. But a report or an order is only as good till challenged. Once challenged, it is incumbent upon the respondents' authorities to deal with all contentions in the appeal and then come to independent conclusions, even while agreeing with the order appealed against. However, the orders of the DA, AA and the Revisional Authority passed on the basis of detailed representations/defence/ appeal petitions dated 19.1.2002, 15.4.2004, 8.9.2004, 2/5.11.2004 , the DA, AA and Revisional Authority have come to conclusions without rebutting all the issues raised by the applicant point by point. Some of the instances are narrated hereafter. For example, on the issue of independent witness, the IO has recorded the statement of PW 6, stating that



as per terms of para 705 of the manual two independent witnesses as non gazetted staff were deployed. But the applicant has repeatedly challenged this and highlighted violations of para 704 and 705 of the Vigilance Manual in the defence/appeal and at all stages, without exception. None of the impugned orders have discussed or even attempted to discuss this issue, even by way of upholding or justifying the action of authorities in the light of departmental instructions or in the light of ruling relied upon by the applicant. All the orders have concluded about the alleged amounts taken as bribe and upheld the calculation given in the Inquiry Report. However, the impugned orders have upheld the findings of the IO without reference to the other points in the defence/appeal challenging the Inquiry report, the order of the DA, AA etc. The DA has dismissed the deposition of DW.1 as that of a tutored witness, without giving any grounds. Similarly, the Revisional Authority has enhanced the punishment without clearly articulating why he considers the punishment awarded by the DA not commensurate with the gravity of the offence. All of these could singly or collectively have a bearing, either way, on the outcomes of the disciplinary proceedings only after an open and independent examination.



11.

9. Without going into the merits of the case, as it is not in the scope of the Tribunal to appreciate evidence as being sufficient and/or correct or otherwise, we are constrained to observe that each of the respondents, who have passed the impugned orders have not exercised due diligence in meticulously going through the points raised by the delinquent official in his defence. The contentions raised by the applicant should have been taken up point by point and dealt with by assigning cogent reasons as to why the contentions are incorrect, inadequate etc. and independently arrive at findings and award punishment, as deemed fit, based on the findings. It is not enough to pass orders, after giving opportunity to the applicant to be heard, but orders must weigh all factors, including the objections raised before the authorities by the applicant vis-à-vis the very detailed report of the IO in this case. It must be ensured that the right to appeal is a right available both in letter and spirit. It is not enough to have given opportunity; the question is whether the opportunity was adequate enough to afford a fair hearing to the delinquent employee, which in this case has arisen on account of omission at the level of the DA, AA and the Revisional Authority to deal with all the contentions raised by the applicant at each stage and before each of the above authorities in the course of the disciplinary proceeding and passing orders thereon.



10. It is true that in cases of alleged corruption by Government servants no lenient view should be taken. But this must be done within the laid down parameters of the principles of natural justice and after meeting fully and consequentially the defence arguments. Hence, we are of the view that the applicant has not been given adequate opportunity for a fair hearing at the level of DA, AA and Revisional Authority. In this connection we are of the view that the respondents' authorities have not dealt with the following issues:-

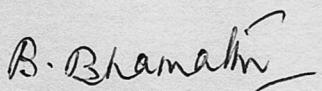
- (i) The grounds on which DW-1 was deemed as tutored witness by the DA.
- (ii) Whether the Para 704 and 705 of the Vigilance Manual were complied with.
- (iii) Grounds on which it can be deemed to be proved beyond doubt that Ram Prasad was not engaged by the applicant and was taking bribe on his own motion and not on the basis of alleged collusion between to.
- (iv) Whether Exhibit P-1 was prepared after Vigilance check.
- (v) Ground of disagreement with the orders of DA for enhancement of punishment.

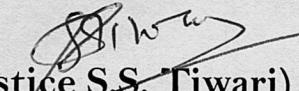
11. In view of the above, we find this a fit case to be remanded to the respondents to make good the procedural infirmities to meet the ends of natural justice. Hence, the case is remanded to the

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respondents to initiate denovo proceedings from the stage of the DA from where the infirmity has occurred. The entire process must be completed with in a period of 6 months with effect from the date of issue of certified copy of the order. We refrain from giving our observations on the various citations relied upon by the applicant, on the understanding that the respondents would take due cognizance of rulings in the course of conducting the proceedings afresh.

**12.** In view of the above observations, the **OA is allowed.**  
No order as to costs.

  
(Ms. B. Bhamathi)  
Member-A

  
(Justice S.S. Tiwari)  
Member-J

Sushil