

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 13th day of August, 2004.

QUORUM : HON. MR. D. C. VERMA, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 439 of 1999

Uma Shanker Awasthi son of Shri S.G. Awasthi, aged 41 years, R/O 331-A/3-G, Naubasta, Hamirpur Road, Kanpur.

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.....Applicant.

Counsel for applicant : Sri O.P. Gupta.

Versus

1. Chief Traffic Manager, Northern Railway, Kanpur Central, Kanpur.

2. Chief Commercial Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.

3. Union of India through Secretary, Ministry of Railway, Govt. of India, New Delhi.

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.....Respondents.

Counsel for respondents : Sri G.P. Agarwal.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T., Act, 1985, the applicant has prayed for quashing of the punishment order dated 24.6.98 (Annexure A-1) and Appellate Order dated 13.11.1998 (Annexure A-2) by which the penalty of reversion to lower grade from grade of Rs.4000-8000 (Rps) to the grade of Rs.3200-4900 (Rps.) for a period of two years with cumulative effect ^{was imposed and} has been upheld by the Appellate Authority. He has further prayed for issuance of direction to the respondents to restore the applicant to his original grade with grant of arrears of pay and other consequential benefits.

2. The factual matrix of the case falls in a very narrow compass. At the relevant time, the applicant was posted as a Booking Clerk in Railways at Kanpur. The disciplinary proceedings under Rule 9 of the Railway

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Servant (Discipline & Appeal) Rules, 1968 was initiated against the applicant by issue of a charge memo dated 10.2.1992 (Annexure A-3). By his statement of defence, the applicant denied all the charges and enquiry was held. On completion of enquiry, he submitted his brief statement of defence. The Inquiry Officer submitted the report to the Disciplinary Authority who gave show cause notice to the applicant on 27.6.97 along with the enquiry report (Annexure A-5). The applicant filed representation against this show cause notice on 7.7.1997 (Annexure A-6). The Disciplinary Authority imposed upon the applicant, the penalty of reversion to a lower grade. Being aggrieved from the penalty order, the applicant preferred and appeal on 31.7.98 (Annexure A-7), which was rejected by the Appellate Authority by a letter dated 13.11.1998 (Annexure A-2).

3. The disciplinary proceedings culminating in impugned order has been challenged by applicant on various grounds. He has pleaded that throwing of Rs.1000/- (two G.C. notes of Rs.500/- each) is not supported by evidence. The written statement of S.K. Srivastava, Senior Clerk, CBS Office, Kanpur obtained during preliminary enquiry has been relied on as evidence. S.K. Srivastava, in his deposition before Inquiry Officer, has stated that he has not seen as to who has thrown the G.C. note from counter No.3. He has further stated that whatever he has stated on 1.10.1991, is the dictation from Mr. Anil Kumar, PW-III, a member of the Anti Fraud Team. (Annexure-8). He has stated that the said statement was obtained from him under pressure from PW-III. The applicant has stated that he was not provided opportunity to cross-examine the prime witness i.e. S.K. Srivastava. It has also been contended that the statement of a witness during the preliminary enquiry cannot be used as evidence. Hence throwing of Rs.1000/- by the applicant is not proved. The charge of illegal money extracted by overcharging the passenger or sale of spurious

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or used tickets, no effort was made to find out the source of alleged illegal money. He has pleaded that it was not found in his possession. Neither shortage was found in counter cash nor he was caught red handed either overcharging the passengers or selling spurious or used tickets. Para 4(1)(d) of the enquiry report is to the effect that counter cash and tickets in tubes of the counter No.3 were not checked by the vigilance squad. It is in these circumstances that the Inquiry Officer returned the verdict of "not proved". As such, the charge of possessing illegal money is not proved. The applicant has refuted the charge of declaring his private cash in excess. He has stated that he was having Rs.46/- as private cash and Rs.31/- was spent in entertainment of his brother-in-law and he was left with Rs.15/- in his pocket. Even the Disciplinary Authority, in his order, has stated that prosecution did not try to investigate about the private cash declared and he agreed with the Inquiry Officer that Rs.31/- was spent to entertain his brother-in-law. In view of this, the applicant contends that the charges are not proved and the impugned order is based on summises and suspicion.

4. The respondents, on the other hand, have opposed the contention of the applicant and have submitted that the charge against the applicant are that he passed on Rs.1000/- (two notes of Rs.500/- each) to Sri S.K. Srivastava. Sri Srivastava was intercepted by Sri Anil Kumar, S.T.E. Hqrs., who recovered these G.C. notes which were deposited in the booking office. It has been submitted that even if the counter cash or the ticket tubes were checked, it was not possible to find out ill gotten money either by overcharging or sale of spurious tickets as the money had already been thrown and passed on to Srivastava. The respondents have further stated that what is to be followed in the departmental proceedings is that general principles of natural justice are given effect and the employee is given reasonable

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opportunity to represent his case. In this particular case, applicant was given reasonable opportunity to represent his case and even a personal hearing had been granted.

5. We have heard counsel for both the parties at length and perused the pleadings. We have also gone through the original records of the enquiry proceedings.

6. During the course of hearing, counsel for applicant relied heavily in the case of Ministry of Finance & others Vs. Ramesh, 1998 SCC (L&S) 865. This is a case of living together of a male Govt. servant with a lady having extra-marital sexual relationship with her. The Disciplinary Authority in this case relied on the document allegedly containing the statement of lady in question without offering her as a witness for cross-examination. In this case also, submits the counsel for applicant, the statement of Sri S.K. Srivastava was taken at the time when the checking was done and he was never produced as a witness so as to enable the applicant to examine and cross-examine him. It is asserted that the facts of this case are squarely covered by the facts of the case of Ramesh (Supra).

7. The counsel for respondents, during the course of hearing, has asserted that the enquiry proceedings and the impugned order do not suffer from any irregularity, and the charges have been proved by documentary and oral evidence. He argued very strongly that throwing of Rs.1000/- from counter No.3 and other circumstantial evidence lead to natural presumption that the applicant has illegal money with him.

8. The main question, which falls for consideration is that whether the respondents are justified in imposing the major punishment of reversion to lower grade. The perusal of enquiry report and impugned order leave us in no doubt that the applicant appear to have been more sinned than against his sinning. Throwing of money has not been

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conclusively proved as the eye witness has retracted his statement. The applicant has pleaded that two members of the vigilance team were inside his counter when he was allegedly throwing the two G.C. notes. We are inclined to agree that one of them could have caught him red handed. This presumption is natural as the team was there to check the fraud. They were not ordinary persons and their duty was to be more vigilant. Secondly, the appellate order has taken into account the punishment awarded to the applicant in the past. It could not have been done unless the same formed part of the chargesheet so as to enable the accused to reply to the charge. It is against the principles of natural justice. Thirdly, the order of Disciplinary Authority mentions that prosecution could not investigate about the private cash declared and he agreed with the report of Inquiry Officer that Rs.31/- was spent to entertain his brother-in-law. These shortcomings pointed out by the Disciplinary Authority prove inherent weaknesses in the case.

9. Even the Appellate Authority has stated that the checking of counter cash or ticket tube etc. would surely be taken as a lapse on the part of Anti Fraud Squad for which they need to offer explanation but that cannot dilute the offence of the charged employee. This alone shows that ill gotten money could not be proved on the basis of the evidence and to punish the applicant is not proper.

10. On the question of degree of proof required in a departmental proceeding, we may quote from the judgment of the Apex Court in the case of Ramesh (Supra) that 'It is true that the degree of proof required in a departmental disciplinary proceeding, need not be of the same standard as the degree of proof required for establishing the guilt of an accused in a criminal case. However, the law is settled now that suspicion, however, strong, cannot be substituted for proof even in a departmental proceeding.'

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11. From the above, it is clear that disciplinary proceeding is vitiated. Accordingly the punishment order as well as the ~~appellate~~ order cannot be sustained and are ~~liable to be~~ quashed.

12. In view of the facts and circumstances mentioned above and our discussions made, the O.A. is allowed with liberty to initiate the disciplinary proceedings *denovo*, if so advised. This process should be completed within a period of six months from the date of receipt of a copy of this order.

No order as to costs.

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