

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. 1243 of 2000

Narendra Sinha, Son of Late B.S. Sinha, resident of 121,
Maseehaganj, Sipri Bazar, District Jhansi.

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.....Applicant.

Counsel for applicant : Sri S. Singh.

Ver-sus

1. Union of India through its Secretary, Ministry of Railways, New Delhi.
2. General Manager/Addl. General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai-400001.
3. Divisional Railway Manager, Central Railway, Jhansi.
4. Chief Commercial Superintendent, Central Railway, Headquarter Office, C.S.T., Mumbai.

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.....Respondents.

Counsel for respondents : Sri A.K. Gaur.

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 the punishment order dated 18.3.1988 by which the Disciplinary Authority imposed the penalty of reduction to a lower grade of Rs.950-1500 from grade Rs.1400-2300 on the permanent basis which was upheld by the Appellate Authority as well as the Revisional Authority by orders dated 15.1.1989 and 2.11.1999 (Annexures I-A, I-B & I-C). He has further prayed for issuance of direction to the respondents for payment of regular monthly pension after re-fixation of the same as per revision/pay scale i.e. Rs.4500-6000 w.e.f. 1.1.1996 including his post retiral dues along with interest thereon.

2. The facts of the case, in brief, are that the applicant was working on the post of Head TTE in the grade

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of Rs.1400-2300 in Central Railway, Jhansi Division, Jhansi. The disciplinary proceedings under Rule 9 of the Railway Servants (Disciplinary & Appeal) Rules, 1968 was initiated by the issue of charge Memo No. P/19/2534/VC/COM dated 17.6.87. The Article of Charges framed against the applicant are as under :-

- "1. Shri N.Sinha demanded and collected Rs.60/- in allotment of 2 berths Nos.39 and 47 Ex., New Delhi to Raipur against the Railway dues of Rs.42/- the receipt for which he issued vide EFR No. 423202 dated 18.1.87 thereby collected Rs.18/- as illegal money.
2. Shri Sinha made allotment of berth Nos.39 & 47 to the party referred in Charge I in coach No. S-9 (5880) which was not manned by him but being manned by Shri S. Kapoor another TTE.
3. Shri N. Sinha failed to realise reservation charges from Jhansi bound passengers who were sitting in coach No.5229 (BPL coach) being manned by him and thus did not discharge his assigned duty resulting loss of Railway revenue.
4. Shri N. Sinha did not cooperate with the Vigilance team in as much as he refused to realise reservation charges from Jhansi bound passengers after blocking his EFT No. 423204."

3. By his statement of defence, the applicant denied all the charges. Accordingly, the enquiry was conducted and the Inquiry Officer submitted his report to the Disciplinary Authority. The Disciplinary Authority by his order dated 18.3.88 imposed upon the applicant the penalty of reduction to a lower grade. Aggrieved by this order, the applicant filed O.A. No.618/88 before the Principal Bench of C.A.T. This O.A. was allowed by an order dated 8.6.88 on the line indicated below :-

"We direct that the applicant should present himself in the office of the Divisional Railway Manager at Jhansi and receive the written order of reversion dated 18th March, 1988. If the applicant files any appeal against the order within two weeks, the appellate authority shall entertain and dispose it of on merits within a period of two months. If

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any adverse order is made by the Appellate Authority, the applicant may file a review application within one month of the service of the appellate order. The review application should, thereafter, be disposed of within one month of submission of the review application. There shall be interim stay pending disposal of the appeal and the review application, if any, filed."

4. The applicant filed appeal on 27.6.88 before the Appellate Authority i.e. Chief Commercial Superintendent, Central Railway, Bombay Bhti (Annexure No.3). The show cause notice was issued to the applicant on 16.8.88 proposing to enhance the penalty. He represented to the Appellate Authority by his letter dated 13.10.88 (Annexure No.5). However, the Appellate Authority rejected his appeal and the penalty imposed by the Disciplinary Authority was maintained by his order dated 15.1.1989. Applicant, aggrieved by the appellate order, filed a review application on 12.2.1989 before the General Manager, Central Railway, Bombay V.T. as per the direction of the Hon'ble Tribunal, Principal Bench, New Delhi. The review application was kept pending before the Revisional/Review Authority for about 10 years. Meanwhile, the applicant retired on 30.6.96 from the post of Head TTE, Central Railway, Jhansi Division, Jhansi on superanuation and he was paid his pension fixed by the respondents on the salary in the scale of Rs.1400-2300 last drawn by the applicant. After four years of his retirement, all of a sudden by an order dated 2.11.1999, his revision petition was dismissed and the penalty imposed by the DRM, Jhansi was confirmed.

5. The applicant has questioned the enquiry proceedings punishment order, appellate order and the revisional order on various grounds. He has contended that the entire disciplinary proceedings is wholly vitiated in gross violation of principles of natural justice and the findings recorded against the applicant is without any basis. He

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has further contended that the material witness, the complainant against the applicant was not even examined despite the repeated request by the applicant for the same. The points raised by the applicant in his appeal has neither been considered, nor discussed, nor any finding or reasons for conclusion has been recorded by the Appellate Authority. He has assailed the revisional order on the ground that the competent authority has taken long time to decide his revision application in a most unjust and an arbitrary manner. This is in gross violation of the specific direction of Hon'ble Principal Bench, C.A.T., New Delhi which suffers from the vice of arbitrariness and is not sustainable. There is no justification in keeping the revision of the applicant for 10 long years despite the specific direction of the Tribunal for disposing the same within one month of the submission and further proceedings to pass the order just to harrass and victimise the poor applicant after four years of his retirement. He has pleaded very strongly that the enquiry proceeding was a case of no evidence.

6. Respondents, on the other hand, have opposed the contention of the applicant. They have submitted that it is not a case of no evidence but a proper enquiry has been held and the three investigating Inspectors of Railway Vigilance were examined by the Inquiry Officer. The applicant was given full opportunity to cross examine the prosecution witnesses. He was also allowed the Defence Helper. Perusal of the original records leaves no doubt that the enquiry was held and all the charges against the applicant were proved. They have further argued that the order of the Disciplinary Authority is based on the enquiry report and the findings submitted by the Inquiry Officer. The appellate order has also been passed after taking into consideration the written statement in reply to the show cause memorandum and entire DAR proceedings. He was also granted personal hearing and has accepted that he has

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refunded the money to one of the passengers. The revisional order was not passed on time because the applicant, while filing the revision application, also requested therein that he may be given personal interview/hearing. Accordingly, the date of personal hearing was fixed on 17.4.89 by the General Manager, Central Railway vide letter No.HPB/309/C/JHS dated 22.6.89 but he did not turn up for hearing and instead he submitted an application dated 14.6.89 requesting therein that he is under sick list and unable to attend personal hearing on date (Annexure CA-1 & CA-2). The respondents have stated that since then the petitioner did not submit any application for personal hearing to the General Manager till his retirement i.e. 30.6.96. However, his review application has been disposed of by the General Manager, Central Railway, Mumbai CST vide letter dated 2.11.1999. The respondents have further submitted that the entire DAR file was not traceable and on account of missing of the file revision of the applicant could not be disposed of for a long period of about 10 years. This has been stated by the counsel for respondent in his Civil Misc.Appn. dated 31.5.2004.

7. The respondents have further stated that applicant was allowed provisional pension on the basis of last pay drawn by him at the time of retirement. After disposal of the review, the applicant has been paid all admissible retirement benefits as per extent rules which details is as under :-

i) N.C.P.S.	Rs.1,27,162/-
ii) G.I.S.	Rs. 7,982/-
iii) D.C.R.G.	Rs. 56,512/-
iv) Leave Salary	Rs. 17,979/-

It has been further submitted that the applicant had been advised vide letter No.P/ESP/4/N-52/57/23 dated 13.2.2001 with regard to applicant's all settlement dues arranged to him (Annexure CA-3).

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8. We have heard counsel for the parties at great length and perused the pleadings on record. We have also gone through the original record regarding departmental enquiry produced by the counsel for respondents Sri A. K. Gaur.

9. During the course of hearing counsel for applicant raised objections regarding the conduct of enquiry and pointed out that the enquiry has not been fair and principles of natural justice has not been followed. He has stated that disciplinary proceedings was wholly initiated and the finding recorded against the applicant is without any basis of evidence. Since the enquiry proceedings along with its reports and findings was not available with the O.A., we decided to call for the original records regarding the DAR proceedings. It has not been possible for the respondents to lay hand on the original DAR proceedings and they have reconstructed the record and produced the copy of the proceedings. We have gone through the entire proceedings and we find that a detailed enquiry was held and there were two prosecution witness who were examined and cross-examined A.R.E. on behalf of the applicant had been allowed to cross-examine the prosecution witnesses. Documentary evidences were also produced and they were examined by the applicant and the A.R.E.

10. From the above it is clear that is not a case of no evidence as contended by the learned counsel for applicant. It is settled principle of law that this Tribunal is not supposed to act as an Appellate Authority to re-appreciate the evidence and substitute its finding to arrive at the conclusion that charges have not been proved. This firm legal position flows from the various decisions of the Apex court, namely, D.C. Chaturvedi Vs. Union of India & others (1995) 8 JT (SC), State of Tamil Nadu Vs. T.V. Venugopal (1994) 6 SCC 302 and Syed Rahimuddin Vs. D.G.C.S.I.R. (2001) AIR SCW 2388.

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11. In the backdrop of the law laid down in the aforesaid decisions, we find that the charges against the applicant were proved in an enquiry which was conducted in conformity with the procedures prescribed in the rules. In view of this, the O.A. is liable to be dismissed.

12. In view of the facts and circumstances, mentioned above, and the discussions made by us, the O.A. is devoid of merit and is dismissed with no order as to costs.

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