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**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 17 DAY OF 3, 2010)

PRESENT :

HON'BLE MR. A. K. GAUR, MEMBER-J
HON'BLE MR. D. C. LAKHA, MEMBER-A

ORIGINAL APPLICATION NO.882 OF 2002

(U/s, 19 Administrative Tribunal Act.1985)

N. Ram, aged about 59 years,
Son of Dewa Mahto, C/o Sri H.K. Jauhari,
1120, Kalyani Devi, Allahabad (at present posted as Sub-Divisional
Engineer, 'QA', M/s Birla Ericsson Optical Ltd., Post-
Chrohata, Rewa, M.P.-486 006.).

..... Applicant

By Advocate : Shri A.B.L. Srivastava

Versus

1. The Union of India, through the Secretary,
Ministry of Tele-Communication,
New Delhi.
2. The Deputy General Manager, 'QA',
Naini, Allahabad.
3. The Member Services,
Tele-Communication, West Block-I,
Wing-2, Ground Floor, R.K. Puram,
New Delhi.

..... Respondents

By Advocate : Shri D.S. Shukla

ORDER

DELIVERED BY HON'BLE MR. A. K. GAUR, MEMBER-J

Brief facts of the case are that the applicant was given a charge sheet dated NIL on 27.1.1998, and due to the pendency of departmental proceedings the decision regarding promotion of the applicant was kept in sealed cover by the office of the Chief General Manager, (QA) Bangalore. On the objections of the applicant, the aforesaid charge sheet was cancelled by order dated

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13/17.8.1998. It is urged by the applicant that as the said charge sheet was cancelled, the decision with regard to his promotion, which was kept in sealed cover, should have been opened and he should have been promoted to the post of Senior Sub-Divisional Engineer. But, the respondents have not opened the said sealed cover nor the applicant was promoted to the post of Senior Sub-Divisional Engineer with effect from 01.02.1998 subsequently the second charge sheet dated 26.08.1998 was served upon the applicant at Allahabad through the Deputy General Manager (QA), Naini, Allahabad (Annexure A-4). The said charge sheet was replied by the applicant by filing a detailed reply dated 1.9.1998 (Annexure A-5). In the first charge sheet the applicant filed his reply dated 3.2.1998 in which he had mentioned that he was given Home Town LTC advance of Rs. 6000 but the department had already recovered Rs.7000 from his pay. The allegations against the applicant is that he had preferred a LTC Bill for visiting his Home Town from Rewa to Hazari Bagh and back for himself along with his family consisting of his wife, son and two daughters. The applicant has produced an attested copy of the Railway Ticket of journey from Allahabad to Hazaribagh Road by A.C. 2- Tier to the Controlling Officer, D.E.T. (QA), Naini. The case of the applicant was referred to Northern Railway, New Delhi for verifying the genuineness of the claim and whether the journey was performed by the applicant on the relevant date and class of travel, which was booked in train No.3004, Bombay-Howrah Mail under P.N.R. No.110008 (Ticket No.06437234). According to the report submitted by the Railway Administration it was intimated that the above ticket was booked on 21.05.1996 for the journey on 28.05.1996 and refund granted on 27.5.1996. The case of the

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applicant is that he had performed onward journey on 28.5.1996.

On the basis of the aforesaid allegation a charge sheet was issued to the applicant that he had committed misconduct and failed to maintain absolute integrity and acted as an unbecoming of a Government Servant. According to the applicant a total amount of Rs.6,310/- was claimed from the respondents, and out of which the applicant had taken an advance of Rs.6,000/-. Respondents have already recovered Rs.7,000/- from the salary of the applicant as penal interest. The applicant had produced the ticket in original before the D.E.T. (QA) Naini who had seen the ticket and allowed the applicant to submit required proforma within three days prior to the commencement of onward journey. The applicant had submitted proforma on 25.05.1996 after attaching attested copies of Railway Tickets. It is further submitted that neither the said D.E.T. (QA) made any complaint that original of the ticket was not produced before him nor the said D.E.T. was produced before the Enquiry Officer as a witness. The presenting officer submitted his written statement without indicating that the charges were proved against the applicant. The applicant submitted his reply to the charges on 27.2.1999, and denied the charges and requested that there is nothing on record to substantiate the charges leveled against him. During the course of Departmental Enquiry two witnesses were produced namely:

1. Sri M.V. Kamath
2. Smt. B. Dey, Mazmudar

None of the aforesaid two witnesses could say anything against the applicant and as to who had signed the report, on the basis of the contents of the letter received from Northern Railway, New Delhi to whom the case was referred for verifying the genuineness of the

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LTC claim. A true copy of the letter dated 11/12.2.1997 has been filed and marked as Annexure A-9. According to the applicant the person who had signed Annexure A-9 was never produced as a witness before the Enquiry Officer nor his designation was revealed before the enquiry officer. It is also mentioned by the applicant that the Railway Ticket Annexure A-12 purchased and used by the applicant was Ac 2 Tier whereas the report Annexure A-9 got from Railways relates to II Class. Apart from the aforesaid mistake several other discrepancies in Ticket, P.N. R. No.3004 were pointed out by the applicant. The main ground taken by the applicant in his OA is that there is no evidence against the applicant to hold the charges proved, yet the applicant has been awarded punishment dated 04.07.2000, confirmed by the Appellate order dated 19.01.2001.

2. In the counter affidavit filed by the Deputy General Manager (QA) Naini, it is submitted that the applicant was due for promotion on 6.4.1998. The original charge sheet served on the applicant on 27.1.1998 was not accompanied by Annexure-4 i.e. List of witnesses by whom articles of charges framed were proposed to be sustained. Preliminary hearing was held on 28.5.1998. The case was returned by the Investigating Officer on 29.7.1998 pointing out shortcoming in the charge sheet. The charge sheet was accordingly cancelled and a fresh charge sheet along with Annexure-I without any modification in Annexure-I to III dated 26.8.1998 was served on 29.8.1998. The sealed cover was not opened because of the pendency of the Disciplinary proceedings. In the letter dated 13/17.8.1998 it was clearly mentioned that a fresh charge sheet was being issued. The ✓

applicant tried to cheat the department by claiming false LTC claim for which he had been proceeded. The recovery of amount with penal interest does not absolve him of serious charges/misconduct committed by him. The applicant had produced attested copies of the Journey/reservation ticket from Allahabad to Hazaribagh Road by AC 2 tier to the competent authority. There is not an iota of evidence with the applicant to support his case. The attested photo copies of Railway Ticket booked on 21.5.1996 for the journey on 28.5.1996 in Train No.3004 Dn. From Allahabad to Hazaribagh Road, was produced before the controlling Officer by the applicant, subsequently it was got cancelled and refund granted on 27.5.1996 as confirmed by Northern Railway vide their letter No.NDCR/E-36/LTC 148/1997. **(i) There is no proof of confirmation of the wait listed ticket for journey from Allahabad to Hazaribagh Road. (ii) Northern railway Authority had clearly confirmed cancellation of tickets and refund of money (iii) the applicant has not produced valid proof for part of journey from Rewa to Allahabad (127 Kms), Hazaribagh Road to Hazaribagh Town (100 Kms) and both the claims were made and for return journey neither Train nor bus tickets have been submitted. The Northern Railway Report has been received on the specific request of the Department for verification of doubtful claim. The report is signed and authentic, received from the Northern Railways. According to the respondents there are** discrepancies in the PNR number and class of travel indicated in the Railway Report (ex.S-2) and the copy of the Railway Ticket (Ex.S-1) for onward journey produced by the CO but the other particulars given therein viz; age/sex of the persons for whom the ticket were booked. The date for which the

tickets were booked, journey sector (Allahabad to Hazaribagh Road), Train No.3004 DN etc. are same in both the documents. The report has duly been signed by the Railway Officer, on behalf of the Chief Commercial Manager. The report submitted by the Railways cannot be turned as unauthentic or unreliable. The report was prepared on the specific request of the department for verification of the doubtful claim. The enquiry proceedings were held as per rules and the charged Official signed the daily order sheets without any protest/objection. After concluding the Disciplinary Proceedings, a final decision was taken. The Disciplinary authority imposed one of the major penalties upon the applicant as specified under Rule 11 of CCS(CCA) Rules,1965. Since the Appellate Authority in the present case was President, the Appellate Authority has passed the Appellate order as required under the Rules.

3. The applicant has filed Rejoinder affidavit denying the allegations contained in the counter affidavit and reiterated the same facts as indicated in the Original Application. The Supplementary counter affidavit filed by the respondents is also a repetition of the earlier counter affidavit filed in the case. In the supplementary rejoinder affidavit filed by the applicant it is clearly submitted that the Tribunal has ordered on 22.1.2004 and directed the opposite parties to produce the cancellation slip, if any, filed by the applicant in respect of PNR No.110008, Ticket No.06437234 for train No.3004 Bombay Howrah Mail, and original receipt, if any, by on or behalf of the applicant of having received the refund. Inspite of the aforesaid clear cut direction given by the Tribunal, these documents have not been produced. The opposite

parties thereafter filed an application wherein the opposite parties requested the Tribunal to grant further two months time for complying the order but no documents as directed by the Tribunal were ever produced by the respondents.

4. We have heard Shri A.B.L. Srivastava, learned counsel for the applicant and Shri D.S. Shukla learned counsel for official respondents.

5. Shri A.B.L. Srivastava, learned counsel for the applicant would contend that the charges were proved against the applicant with closed mind amount and malice intent in as much as that it has been proved beyond doubt that the applicant had submitted the original ticket to the D.E.T. (QA) Naini. The Enquiry Officer in his assessment of evidence Annexure A-13 (Page 61) has accepted that the charged officer has produced original ticket before the Competent authority.

6. Learned counsel for the applicant vehemently urged that the persons who had submitted report on behalf of Railway Administration with regard to the fact that the journey was not conducted by the applicant and his family members, have not at all been examined. It is well settled that failure to examine material witness, the charges cannot be said to be proved. He placed reliance on the decision of Hon'ble Supreme Court reported in *1999 Col 8 SCC 582-Hardwari Lal Vs. State of U.P.*

7. Learned counsel for the applicant would further contend that the applicant was denied promotion as Sub Divisional Engineer

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w.e.f. 1.2.1998 intentionally and with a view to harm the applicant by the respondents. It is also argued that the author of the Railway report has not been produced during the course of enquiry and as such the course open for the respondent was to draw an adverse inference against him. Learned counsel for the applicant has placed reliance on the decision reported in *ATJ-1999(2) SC 177-Kuldeep Singh Versus Commissioner of Police*. In order to buttress the contention that there was no evidence to support the findings arrived at by the enquiry officer and Disciplinary Authority.

8. Shri D.S. Shukla, learned counsel for the respondents has placed reliance on the decision reported in *(2004) 1 UPLBEC 581-S.R. Kashyap Vs. Canara Bank and Others* and argued that in the instant case no serious prejudice was cause to the applicant due to non production of Railways report in the departmental enquiry and hence even assuming that there was any technical violation of the procedural rules, we are of the opinion that this is not a fit case for exercising our discretion in favour of the applicant. He also argued that in the Departmental Enquiry the Enquiry Officer is not bound by the strict rule of evidence and procedure contained in the Evidence Act or C.P.C. In absence of the original documents, photo copies could be produced and they could be read as evidence. It is also argued that the findings of fact accorded by the Enquiry Officer and Disciplinary Authority cannot be interfered with by the Tribunal as it does not sit as Court of Appeal over the findings of the Department Authorities.

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9. Learned counsel for the respondents has also placed reliance on the decision reported in 205 SCC (L&S) 407-Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane. Para 8 and 9 of the said judgment are being reproduced hereunder:-

"8. This Court in the case of State of Haryana V. Rattan Singh which is also a case arising out of non-issuance of ticket by a conductor held thus@SCC pp.491-92)

"In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance or rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence-not in the sense of the technical rules governing court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

9. From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh has since been followed by this Court in Devendra Swamy V. Karnataka SRTC."

10. We have carefully perused the case laws cited by the parties counsel and we are firmly of the view that we cannot sit as a Court

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of Appeal over the findings arrived at by Disciplinary authority. We cannot interfere with the same unless the findings are perverse or based on no evidence.

11. We have carefully seen the decision reported in AIR 2010 SC 137-State of U.P. Vs. Manmohan Nath Sinha. In the aforesaid decision Hon'ble Supreme Court has held that High Court or Tribunal cannot re-appreciate or reappraise evidence laid down before Enquiry Officer to reach its own conclusion. The power of Judicial review is confined to decision making process only.

12. We have also considered the decision reported in 2006 (5) SCC 88-M.V. *Bijlani Vs. U.O.I. and Others*, the Apex Court has clearly observed as follows:-

"Disciplinary proceedings being quasi criminal in nature, there should be some evidence to frame the charge. While doing so, he cannot take into consideration any irrelevant facts or refuse to consider the relevant facts- He cannot review to consider the facts, he cannot shift the burden of proof, or reject the relevant testimony only on the basis of conjectures and surmises."

13. No doubt there is discrepancy in the PNR number and class of journey indicated in the Railways report and the copy of Railway Ticket for onward journey produced by the CO but the other particulars given therein i.e. age/sex of the persons for whom the tickets were booked the date (i.e. 28.5.1996) for which the tickets were booked, destination from (Allahabad to Hazaribagh Road), Train Number (3004 DN) etc. are same in both the documents i.e. Ex.S.1 & Ex.S.2 and the report has been signed by a Railway Officer on behalf of the Chief Commercial Manager.

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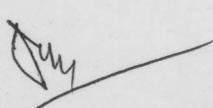
14. In our considered view the same cannot be termed as unauthentic and unreliable. In the present case it is not material as to who signed the report and how it reached to the concerned officer in Department of Telecom. The allegations that the report is hand written, though the form was fully computerized is also not much relevant, in as much as that when the report was prepared on the specific request of the Department for verification of the doubtful claim there is no justification for us in not placing reliance on this document. There is nothing on record to indicate otherwise. It was too much to expect the author of the letter to appear as a witness to prove its authenticity. Apparently, there was no reason to disbelieve the Railway's report. There is no reason for the Railways to give an incorrect report. Moreover, the charged officer also has not alleged any malafide on the part of the Railways. After perusing the Railway Report the Union Public Service Commission found that tickets for onward journey from Allahabad to Hazaribagh Road were booked on 21.5.1996 in the waiting list but cancelled on 27.5.1996 and refund granted. In these circumstances it is quite possible that a copy of the original ticket may have been enclosed by the applicant with the intimation letter 25.5.1996 given to the Controlling Authority for grant of advance. Since the said ticket was later cancelled on 27.6.1996, it is also clear that the journey from Allahabad to Hazaribagh Road was not undertaken by the applicant and his family on 28.5.1996. The LTC claim submitted by him for adjustment of advance patently false and the same is also evident from the fact that the applicant could not submit the original tickets for the journey performed by bus in respect of onward journey and copy of railway ticket for the return journey.

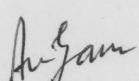
15. It would be profitable to quote the decision reported in 1996 SCC (L&S) 80-B.C. *Chaturvedi Vs. U.O. I. and Others*. The dictum of law propounded by the Apex Court are as follows:-

"It is settled position of law that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence. Neither the technical rule of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence."

16. In view of the aforesaid position of law we are convinced that the charge of submitting a false LTC claim is clearly established against the applicant. In the light of the aforesaid observations and after taking into account all other aspects relevant to the case, we are of the considered view that the applicant has utterly failed to make out any case warranting interference. There is no merit in the OA.

17. OA is accordingly dismissed. No order as to costs.


Member-A


Member-J

/ns/