

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

Allahabad, this the 16th day of November, 2009

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.1253 of 2006
(U/s 19 of Administrative Tribunal Act, 1985)

Radha Krishna Singh, Son of Sri Nand Ji Singh, R/o SA-171 Khatu
Autha, Sarnath, District Varanasi, U.P..

..... **Applicant.**

By Advocate : Shri S.K. Mishra

V E R S U S

1. Union of India through the General Manager(Karmik), North East Railway, Gorakhpur.
2. The Additional Divisional Railway Manager, North East Railway, Varanasi.
3. The Senior Commercial Manager, N.E. Railway, Varanasi.
4. The Divisional Commercial Manager, N.E. Railway, Varanasi.

..... **Respondents**

By Advocate : Shri Anil Kumar

ORDER

By Hon'ble Mr. A.K. Gaur, Member-J :

Heard Shri S.K. Mishra, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents.

2. The applicant was initially appointed as Mobile Booking Clerk on adhoc basis in 1986 and thereafter he was confirmed on the said post in the year 1989. The applicant has been suffering from cancer and was operated upon for cancer of oral cavity in cancer Institute, N.E. Railway,

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Varanasi on 8.12.1999. While working as Mobile Booking Clerk at Ghazipur, the applicant was served with a charge sheet dated 8.11.2001 u/s F-5 for misuse of E.F.T. According to the applicant the charge sheet was issued on a printed proforma, which is mechanical in manner. The applicant was also not furnished copy of relied upon documents which has been mentioned in Article No.3 of the Charge sheet dated 8.1.2001 issued by respondent No.4. During the course of Inquiry, the statement of all the witnesses, which were produced by the respondents was not taken and none of the witnesses have said any thing against the applicant. The allegation made against the applicant in the charge sheet that he had tried to snatch the said E.F.T. No.950964 from P.W.I. Sri M.R. Beg has also not been corroborated during the course of inquiry. It is submitted that during the inquiry proceeding the Inquiry Officer did not ask any question to the main witness namely M.R. Beg as well as to the applicant, as to why and under what circumstances the applicant tried to snatch the E.F.T. in question from Shri Beg. According to the applicant charges leveled against him has not at all been proved and the Inquiry Officer illegally proved the charges against the applicant. Learned counsel for the respondents submitted that inquiry was initiated on the complaint of Shri M.R. Beg who is not the complainant in the case. The applicant has not been afforded opportunity of hearing and he could not submit his defence note against the inquiry report in time. The order of removal dated 26.2.2003 (Annexure-A-1) has been passed in a most casual and perfunctory manner. Against the impugned order of punishment dated 26.2.3003, the applicant filed an appeal dated 5.3.2003 to Sr. D.C.M., N.E.R. Varanasi and in his appeal he has highlighted his grievance and taken all the aforesaid grounds. The applicant has also clearly mentioned in his appeal that he is a cancer

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patient and his family condition is very pitiable. It is argued that the Appellate Authority has decided the Appeal of the applicant in a most casual and perfunctory manner without applying his mind. We have carefully seen the appellate order dated 21.5.2003 (Annexure-A-2) and found that the appellate order has not at all been passed according to the following decisions rendered by Hon'ble Supreme Court reported in :-

- (i) **AIR 1986 SC 1173 : Ram Chand Vs. U.O.I. and others**
- (ii) **2006 (11) SCC 147 : Director IOC Vs. Santosh Kumar**
- (iii) **JT 1994(1) SC 597 : National Fertilizer Vs. P.K. Khanna**
- (iv) **2006 SCC (L&S) 840 : N.M. Arya Vs. United Insurance Co.**
- (v) **JT 2009 (4) SC 519 : Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney & ors.**
- (vi) **2008(8) SCC 236 : State of Uttaranchal & Others Vs. Kharak Singh.**

3. Against the order of appellate authority, the applicant has preferred revision petition. In the memorandum of revision, the applicant has raised several grounds including violation of principle of natural justice, fair play and his being a cancer patient.

4. Learned counsel for the respondents would contend that this Tribunal cannot sit as the court of appeal on the findings recorded by disciplinary authority unless the finding are perverse or based on no evidence. We are fully conscious of this principle of law. We have also noticed that neither appellate authority nor revisional authority has looked into the question of quantum of punishment considering the nature of charge and serious ailment of the applicant. It is settled principle of law that the Tribunal and High Court would not interfere

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with the quantum of punishment unless the same is shockingly disproportionate in view of the decisions rendered by Hon'ble Supreme Court in the case of **A. Sudhakar Vs. Post Master General** reported in **2006 (4) SCC 348**, **State of U.P. Vs. Sheo Shankar Lal Srivastava** reported in **2006 (3) SCC 276** and **Hombe Gowda Educational Trust & others Vs. State of Karnataka and others** reported in **2006 (1) SCC 430**.

5. Learned counsel for the respondents submitted that this Tribunal cannot interfere with the punishment awarded by the Disciplinary Authority as well as Appellate Authority. The court should not interfere with the Administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. It is alleged that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Tribunal, there is no scope for interference. In order to buttress the contention, learned counsel for the respondents have placed reliance on the decision reported in **AIR 2003 SC 1571 - Chairman and Managing Director, United Commercial Bank and others VS. P.C. Kakkar**. It would be apposite to quote the following extract from the decision rendered by Hon'ble Supreme Court reported in **1995 (6) SCC 749 - B.C. Chaturvedi Vs. Union of India & ors.**, wherein it is held that " **A review of the above legal position would establish that the Disciplinary Authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute**

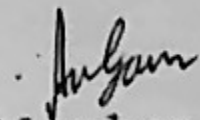
its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

6. We must observe that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. We have carefully perused the record and we are firmly of the view that the Appellate order is cryptic, non speaking and has been passed without application of mind. The ends of justice would not be served if the matter is remitted back to the Appellate Authority for reconsideration of the appeal of the applicant at such a belated stage after a lapse of several years. The applicant has also filed Revision Petition against the order of the Appellate Authority. Neither the Appellate Authority nor the Revisional Authority has at all considered the quantum of punishment awarded to the applicant. In the memorandum of revision, it is clearly and specifically mentioned that the applicant is a cancer patient and being sole bread winner in the family, has to support big family. In our considered view, it is a fit case in which without interfering with the order passed by the Disciplinary Authority, Appellate Authority and Revisional Authority, the matter is remitted back to the Revisional Authority for reconsideration on the point of quantum of punishment. Accordingly, we hereby remit the matter back to the Revisional Authority

to reconsider the quantum of punishment awarded to the applicant within a period of three months from the date of receipt of copy of this order. While considering the revision petition of the applicant the Revisional Authority shall also take into account the serious ailment and family condition of the applicant.

7. With the above directions, the OA is disposed of. No costs.


Member-A


Member-J

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