

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 23rd DAY OF December, 2014)

Present

HON'BLE MR. SHASHI PRAKASH, MEMBER (A)
HON'BLE MS. JASMINE AHMED, MEMBER (J)

Original Application No.871 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Amla Prasad, Aged about 50 years, Son of Late Banshi, Resident of
Village Barwan, P.O. Malkauli, District-Deoria.

.....Applicant

VERSUS

1. Union of India through general manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Sr. Divisional Personnel Officer, North Central Railway, Allahabad.
4. Sr. Divisional Commercial Manager, North Central railway, Allahabad.
5. Divisional Commercial Manager, North Central Railway, Allahabad.

.....Respondents

Advocates for the Applicant:-

Shri K. K. Mishra

Advocate for the Respondents:-

Shri Ravi Ranjan

ORDER

DELIVERED BY

HON'BLE MS. JASMINE AHMED, MEMBER (J)

By way of this original application filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed for the following reliefs:-

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- "i) That this Hon'ble Court may graciously be pleased to quash and set aside the impugned order dated 12.1.2006 (Annexure A-4) and impugned appellate order dated 2.5.2006 (Annexure A-6) passed by respondent No.5 and 4 respectively.
- ii) That this Hon'ble Court further be pleased to direct the respondents to reinstate the applicant and further be pleased to direct the respondent to pay the salary and back wages with all consequential benefits.
- iii) That this Hon'ble Court further be pleased to pass such other and/or further order as may be deemed necessary in the circumstances of the case.
- iv) Award costs to the Applicant."

2. The factual matrix of the case are that the applicant herein was a booking clerk who was appointed in the year 1989 was selected and appointed as Booking Clerk through Railway Recruitment Board. While the applicant was posted as Booking Clerk in the pay scale of Rs.3200-4900, he was served with a memorandum of chargesheet on S.F.5, meant for major punishment on 3.12.2003 by respondent no.5. The allegation was of tampering of railway tickets and collection of excess amount of fare from the passengers. In pursuance of that chargesheet served upon the applicant by respondent no.5 vide letter dated 29.1/20.2.2004 it was informed to the applicant that under Rule 9 (2) of Railway Servants (Discipline and Appeal) Rules 1968 Shri M.M.A. Siddiqui who was Chief Commercial Inspector has been appointed as the enquiry officer to enquire into the charges framed against the applicant. The counsel for the applicant stated that the

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enquiry officer started enquiry w.e.f. 15.3.2004 and finalized his enquiry in May 2005 and on 30.7.2005 he submitted his report to respondent no.5 on 15.10.2005. The respondent no.5 communicated the enquiry report to the applicant and also asked him to submit his representation against the enquiry report if any within 15 days from the date of receipt of the said report. The counsel for the applicant also stated that without giving any further opportunity to the applicant for making representation in respect of enquiry report the respondent no.5 simply reiterated the findings of enquiry report and imposed punishment of Dismissal from Service. In the dismissal order it was also mentioned "accordingly you are removed from service with immediate effect". Counsel for the applicant stated that respondent no.5 who has passed the dismissal order is not the appointing authority of the applicant as in accordance with schedule II of 1968 (Discipline &Appeal) Rules on the Railway Servants removal, dismissal, compulsory retirement can only be imposed by the appointing authority and in the case of the applicant dismissal order has been passed by respondent no.5 who was a senior scale officer, cannot be his appointing authority and accordingly cannot pass the dismissal order. It is also contended that he has no authority to impose two punishments simultaneously on the applicant and doing so without jurisdiction/Authority the

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total procedure smacks of arbitrariness and the counsel also states that the dismissal order is void-ab-initio, no-nest and unwarranted, as such only on this ground this original application is liable to be dismissed. Against the dismissal order dated 12.1.2006 passed by respondent no.5 the applicant preferred an appeal to the respondent no.4 pointing out all the facts and also narrated that the applicant has deliberately been trapped by the station staff. He also contended that without considering the relevant issues that how the sold tickets have been collected by the station staff whereas there is no single complaint of any aggrieved passengers. The respondent no.5 has confirmed the punishment of dismissal from service and also regretted the appeal. The counsel for the applicant stated that the total procedure and the charges leveled against the applicant is nothing but a conspiracy of co-staffs. In support of his statement the counsel for the applicant stated that there was not a single complaint from any of the aggrieved passengers it is only through complain box and those tickets were already sold to different passengers for traveling, then how those tickets have been collected by the complainant, who are co-staffs of same station. He also pointed out that not a single passenger were called for evidence to establish the charges leveled against the applicant and totally based on no evidence. Instead it is based on conjectures and

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suspicion which is unsustainable in the eyes of law. It was stated that it is well settled law that even in regions of domestic enquiry far flung suspicions cannot take place of evidence or preponderance of evidence. Hence the punishment imposed by respondent no.5 and confirmed by respondent no.4 is liable to be quashed. It is also stated that when the applicant demanded for the copy of the complaint made by the passengers and also staff duty roasters from 4.2.2002 to 15.10.2002 it was never delivered to him. The applicant also took the plea that irrespective of his repeated asking to provide him the original ticket no.42084-85 of super fast passengers ticket no.14771- 72 dated 7.3.2003 and also collected tickets for the sale of child ticket series for Howrah Delhi of different dates mentioned in the article of Charge but nothing were made available to the applicant whereas charges have been framed on the basis of sold tickets only and the counsel for the applicant took the plea that applicant has not been given reasonable opportunity to defend his case and as such the punishment imposed by the respondent no.5 is without jurisdiction, harsh and based on no evidence.

3. In contra the counsel for the respondents vehemently opposes the contentions made by the counsel for the applicant and states that the question of competent authority raised by the

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applicant is completely unwarranted and vague. Respondent no.5 is completely authorized to pass the dismissal order as per policy issued by Railway Board vide letter no.797-E/D and AR dated 14.9.2004 the senior scale officer (DCM) is fully competent to remove/dismiss the employees carrying scale upto 5000-8000 as such the applicant being within the scale the respondent no.5 was competent enough to dismiss the applicant. IN support of his argument the counsel for the respondent drew our attention to annexure no.CA-2 of Counter Affidavit which is a circular of Railway Board issued on 14.9.2004. The counsel for the respondents also states that the respondents have fully followed the laid down procedure of disciplinary proceedings and accordingly served the copy of chargesheet, enquiry officer's report, given him the opportunity of replying the enquiry officer's report. After providing him these opportunities and taking into consideration the enquiry officer's report the respondent no.5 has dismissed him from the service for which he was given time to prefer appeal and accordingly he has preferred appeal which was regretted by respondent no.4. In contradiction to the applicant's claim that the case is of no evidence the respondents by way of filing their CA and annexing documents they have contradicted the statement of the applicant and through various documents (sold out tickets) tried to

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prove that it is not a case of no evidence. They also states that the appellate authority passed its impugned order dated 2.5.2006 after giving full opportunity and also giving personal hearing to the applicant. He also stated that the charges leveled against the applicant were all well founded and proved by the documentary as well as by oral evidence and full opportunity was given to the applicant during the course of enquiry. The counsel for the respondents also states that this is not the first time that the applicant has done something illegal which caused loss to the railway and also diminishes the reputation of Railways/Railway employees. Hence the applicant is not entitled anyway to get any relief as claimed by him.

4. Heard the rival contentions of the parties perused the documents on record and also gone through the written submissions along with relied upon citations.

5. It is not disputed that the complaint against the applicant was only on the basis of complaint found from complaint box. The counsel for the applicant raised the issue that no independent witness has been examined to prove the charges against the applicant. While proving the alleged charges against the applicant

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no direct/independent witness was summoned or not any single passengers call for evidence to establish the charges leveled against the applicant. As a matter relates to selling of a ticket to a particular railway station the station master of that railway station, the entire alleged situation should have been brought into the notice of the station master of that particular railway station as per rule 507 and section 112 of the Indian Railway Commercial Manual as in accordance with rule for framing the charges of 'tampering' stations master on duty plays a vital role and he should be the key witness for establishing the said charges but here in this case we find that the stations master on duty has not played any role in determining the allegation against the applicant nor he has been shown as witness in the list of witnesses.

6. It is the well settled law that in cases where there is no oral evidence adduced and documentary evidence is not proved or exhibited by witnesses it cannot be read into evidence for proving guilt of the employee. It is not the case that the applicant was not granted opportunity of hearing by the enquiry officer which has very well be admitted by the applicant. By this the respondents wanted to prove that there has been no denial of reasonable opportunity to the applicant. On the issue of punishment imposed

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by the incompetent authority the respondent placed reliance on the letter dated 14.9.2004 issued by North Central Railway, Headquarters Office Allahabad and stated that in case of the applicant Senior Scale officer is authorized to make appointments hence he is authorized to impose the punishment of dismissal also. Controverting this issue the counsel for the applicant placed reliance on the Full Bench Judgment in case of Gafoor Mia Versus Director D.M.R.L. wherein it has been held that an officer on whom power of appointment has been confirmed by delegation cannot impose punishment". Hence punishment like dismissal from service can only be imposed by proper appointing authority not by an authority on whom the power has been delegated.

7. Undisputedably, the nature of department proceedings is a quasi judicial proceedings and the enquiry officer performs duty in a nature of quasi judicial function. While proving the charges leveled against the delinquent officer the enquiry officer must take into consideration that he should arrive at a upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against the accused could not be treated to be evidence in the disciplinary proceedings. Here in this case also no

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witness was examined to prove the alleged complaint. The respondents have merely arrived to the conclusion on the basis of a anonymous complaint found into the complaint box. Admittedly, there was no direct evidence. Even there was no indirect evidence to corroborate the complaint found in the complaint box. We find in the case of Narender Mohan Arya Versus United India Insurance Company Limited reposted in the Hon'ble Apex court has held that the enquiry report in the disciplinary proceedings was based on no evidence and the Hon'ble Apex Court that a findings can be arrived at by the enquiry officer if there is some evidence. It is held by the Hon'ble Apex Court and also by various Hon'ble High Courts that the materials brought on record pointing out the guilt of the delinquent officer required to be proved. A decision has to be arrived at on some evidence which is legally admissible. It is also held that the provisions of the evidence Act may not be applicable in departmental proceedings but the principles of nature justice are. None of the allegations against the applicant against the sold out tickets was corroborated by any independent witness or to whom it was sold. Hence the report of the enquiry officer seems based on merely ipse dixit as also surmises or conjectures, hence the same could not be sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Even prior

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charges and punishment which are not of a part of charge here in this case cannot be taken into consideration to arrive at any conclusion on the basis of suspicion and doubts. It is a well settled law that respondents cannot trouble beyond the charge sheet while dealing in a disciplinary proceedings as we found in the case of Roop Singh Negi Versus Punjab National Bank reported in 2009 (2) SCC 570 the Hon'ble Apex Court has held that suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for a legal proof. Accordingly, we feel that the case herein points towards no evidence and the respondents have acted upon on the basis of suspicion and some preconceived idea as they have tried to prove the charges against the applicant on the basis of his earlier action deeds. Accordingly, we feel that the decision of the respondents is based on irrelevant factors not germane for the purpose of arriving at a correct finding of fact and has also failed to take into consideration that where there is no oral evidence adduced and documentary evidence is not proved or exhibited by witnesses, it cannot be read into evidence for proving guilt of the employee. Accordingly, for all the reasons stated above the impugned order dated 12.1.2006 and the impugned appellate order dated 2.5.2006 passed by the respondents are quashed and set aside. The respondents are directed to reinstate the applicant and

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the pay the salary and back wages with all consequential benefits as per rules.

8. With these observations, the original application is allowed.

No Costs.

Jasmine Ahmed
[Jasmine Ahmed]
Member-J

lns/

S. Prakash
[Shashi Prakash]
Member - A