

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHBAD BENCH : ALLAHABAD**

Original Application No.1139 of 2007

Allahabad, this the 14th day of May, 2009.

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. S.N. Shukla, Member-A

Mahendra Prasad Shukla, Son of Kodai Shukla,
resident of A-233/2425, Awas Vikas Colony, Sahpur,
District Gorakhpur.

..Applicant.

By Advocate : Shri A.K. Srivastava
Shri O.P. Chaubey
Shri M.K. Srivastava

Versus

1. Union of India, through the General Manager,
North East Railway, Varanasi.
2. The D.R.M., Varanasi, District Varanasi.
3. The Mandal Parichalan Prabandhak (D.M.M.),
Varanasi, District Varanasi.
4. Vigilance Officer N.E. R. Varanasi, District
Varanasi.

...Respondents

By Advocate : Shri P.N. Rai.

O R D E R

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

We have heard Shri A.K. Srivastava, learned counsel for
the applicant and Shri P.N. Rai, learned counsel for the
respondents.

2. Having gone through the order dated 29.11.2005
(Annexure-5) passed by Disciplinary Authority, order dated
11.5.2006, passed by Appellate Authority and the order of
Revisional Authority dated 16.5.2007 communicated by order
dated 25.5.2007 (Annexure-1) to the applicant, we are fully
satisfied that in view of the following decisions rendered by
Hon'ble Supreme Court in the case of **AIR 1986 SC 1173 :**

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Ram Chand Vs. U.O.I. and Other, 2006 (11) SCC 147 :
Director IOC Vs. Santosh Kumar, JT 1994 (1) SC 597 :
National Fertilizer Vs. P.K. Khanna and 2006 SCC (L&S) 840
: N.M. Arya Vs. United Insurance Co. and 2008 (1) Supreme
today, 617 : DFO Vs. Madhusudan Das, all the three orders
 are cryptic, non speaking and has been passed without
 application of mind. The Disciplinary Authority has passed the
 order on printed format and has not at all recorded any reasons
 in support of punishment order dated 29.11.2005. The
 appellate and Revisional authority in utter disregard of the
 provisions of Rule 22 of the Disciplinary and Appeal Rule 1968,
 failed to consider the case of the applicant in accordance with
 the provisions of rules.

3. Learned counsel for the applicant has placed reliance on
 the decision reported in 2003 (2) ATJ 118 decided by Hyderabad
 Bench of the Tribunal and OA No.606/06 in the case of Anil
 Kumar Tewari Vs. Union of India & ors, passed by a coordinate
 Bench of this Tribunal on 13.5.2008. The relevant observation
 given in the aforesaid case are as follows :-

*" Having considered the charges leveled against the
 applicant and the penalty of removal from service imposed
 upon him for the same and keeping in view the office order
 passed by authorities, we are of the view that the
 punishment awarded is shockingly dis-proportionate and
 we are therefore unable to uphold the same in the facts
 and circumstances of the case. The impugned orders are
 therefore, set aside and the matter is remanded back to*

the disciplinary authority for reconsideration of the quantum of punishment". It is settled principle of law that this Tribunal or High Court has got no jurisdiction to interfere with the quantum of punishment unless the punishment awarded by the competent authority is shockingly disproportionate. In the instant case, we are fully convinced that none of the authorities have applied their mind while passing orders. We have also seen from the record that the applicant has pointed out several infirmities in the order passed by Appellate Authority and Revisional Authority as well as in the inquiry conducted against him but neither Appellate Authority nor Revisional Authority has supported their decision with a reference to the ground taken in the memorandum of Appeal and revision. It is also noticed that in paragraph 6 of the OA it is clearly stated that in the official record of the department only Rs.1, was found to be in excess in cash with the applicant and the same has also been deposited in the treasury of the department. By denying this fact in para 12 of the Counter Reply it is stated that two charges were leveled against the applicant :-

- (i) **The applicant from vigilance decoy demanded and taken Rs.850/- in place of Rs.800/- by selling 5 tickets from Bankata to Bandel and as such illegally recovered Rs.50/- by taking Rs.10/- per ticket in excess as fixed.**
- (ii) **Rs.01/- was found in excess in his cash.**

4. Learned counsel for the respondents submitted that the Disciplinary Authority after thorough examination of entire case and on going through the record, came to the conclusion that the applicant is guilty of the charges leveled against him. He

also submitted that the punishment of compulsory retirement has rightly been given to the applicant.

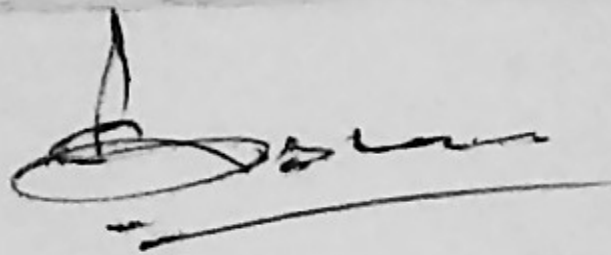
5. We have also gone through the decision of Hyderabad Bench of the Tribunal in S.K. Abdul Salam's case (supra) wherein, it is clearly held that provisions of para 704 and 705 of Indian Railway Vigilance Manual are mandatory. As two Gazetted officers of the department were not taken as independent witnesses at the time of conducting the departmental trap, the entire trap is vitiated in law.

6. Having given our anxious thought to the pleas advanced by the parties counsel and having carefully perused the order passed by Appellate Authority and Revisional Authority, we are satisfied that the order passed by the Revisional Authority and Appellate Authority is wholly cryptic, non speaking and has been passed without application of mind. None of the ground taken in the memorandum of revision/appeal has been considered by the competent authority. As the charges leveled against the applicant are of trivial nature and the proportionality of punishment has not been considered by the Appellate and Revisional Authority. We accordingly consider it appropriate that the Revision petition of the applicant be directed to be reconsidered by the Revisional Authority taking into account the proportionality of the punishment and other various ground raised in memo of Revision in accordance with rules.

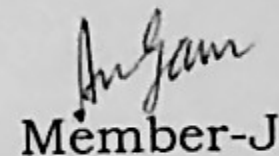
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7. Without entering into the merits of the case, we are satisfied that orders passed by both the authorities are non speaking and cryptic. Without disturbing the order of punishment awarded by the Disciplinary Authority, the order dated 11.5.2006 and 16.5.2007 passed by Appellate and Revisional Authority are quashed and set aside. The matter is remitted back to the Revisional Authority to reconsider the Revision Petition afresh taking into account the ground taken by the applicant and also the proportionality of punishment and pass reasoned and speaking order within a period of three months from the date of receipt of copy of this order. No order as to costs.

8. The O.A. is finally disposed of in the aforesaid terms. No costs.



Member-A



Member-J

RKM/